United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

77-1044

To be argued by
MELVIN D. KRAFT

In The
UNITED STATES COURT OF APPEALS
For The Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

- against -

LEON MAYER,

Defendant-Appellant.

APPENDIX OF DEFENDANT-APPELLANT
LEON MAYER

MELVIN D. KRAFT
Attorney for Defendant-Appellant
Leon Mayer
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UNITED STATES COURT OF APPEALS
FILED
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SECOND CIRCUIT

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TABLE OF CONTENTS

Record Reference	Document	Appendix Pages
	Docket entries	1-7
R 1	Indictment	8-22
R 16	June 27, 1975 motion of defendant	23-33
R 20	October 9, 1975 notice of readiness	34
R 98 pp.13-16	May 14, 1976 transcript of hearing before Judge Tenney	35-38
R 25	May 14, 1976 Affidavit of A.U.S.A. Bannigan	39-43
R 29	May 25, 1976 motion of defendant	44-85
R 35	August 5, 1976 decision of Judge Tenney	86-108
R 77	September 7, 1976 Letter of A.U.S.A. Fryman	109-113
R 36	September 8, 1976 motion of defendant	114-137
R 40	October 19, 1976 decision of Judge Tenney	138-143
R 42	November 3, 1976 order to show cause of defendant	144-209
R 47	November 10, 1976 reply affidavit of defendant	210-224
R 42	November 11, 1976 decision of Judge Tenney	225
R 58	Judgment against defendant Mayer	226

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

TENNEY, J.

0001

75 CR. 263

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.:
vs.	W. Cullen MacDonald AUSA. 791-0005 240
1. IVAN ALAN EZRINE	
2. JOSEPH LICHTMAN	
3. MURRAY LICHTMAN	
4. LEON MAYER	
5. EDWARD VASSALLO Cl. 10-21-75	
6. LAWRENCE GORAL	
7. ANTHONY L. GRECO, JR.	
(2) William Erlbaum 123-60 83rd Ave. Kew Gardens, N.Y. 11415 tele: 263-3235	For Defendant: (6) Howard Hirschfeld 225 Broadway New York, N.Y. 10007 tele: 227-5533
(3) George S. Meissner 16 Court Street Bklyn, N.Y. 11241 tele: 596-2596	(3) Harry R. Pollak 299 Bway New York, N.Y. 10007 tele: Be 3-0386
(4) Melvin D. Kraft, P.C. 36 West 44th St. New York, N.Y. 10036	(7) Jerold C. Weissfeld 160 Broadway, N.Y.C. tele: 227-9826

(04) STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk					
J.S. 3 mailed 5, 6, 7	Marshal					
Violation	Docket fee					
Title 18, 15						
Sec. 371, 1341&3, 77(e)(x)	1001					
Consp. to commit stock fraud. (Ct. 1)						
Mail & wire fraud. (Cts. 2-11)						
Securities fraud. (Cts. 12-17)						
False statement (Ct. 18)						
(Eighteen Counts)						

DATE	PROCEEDINGS
4-11-75 ✓	Filed indictment.
4-14-75	IVAN EZRINE, et al - Filed Affdvt. for writ of H/C ad pros., for Edward Vassallo - writ issued ret. 4-21-75.
4-14-75	[illegible] EZRINE - Filed Affdvt. for writ of H/C ad pros., for Ivan Ezrine - writ issued ret. 4-21-75.
4-21-75	Defts. Vasallo & Ezrine (Produced on writs) Both defts. plead not guilty. Bail was fixed as to both defts. at the sum of $5,000. P.R.B. Ezrine bond to be co-signed by his mother & father. Vasallo's bond to be co-signed by his wife. Both writs satified. Defts. Joseph Lichtman, Murray Lichtman, Mayer, Goral and Greco. (attys Plead not guilty. Bails fixed at $5,000. P.R.B. Case assigned to Tenney J. - Pierce, J.

-over-

DATE	PROCEEDINGS
4-21-75	Lawrence Goral- filed Personal Recognizance Bond in the sum of $5,000.
4-21-75	Anthony L. Greco- Filed Personal Recognizance Bond in the sum of $5,000.
4-21-75	Joseph Lichtman- Filed Personal Recognizance Bond in the sum of $5,000.
4-21-75	Murray Lichtman- Filed Personal Recognizance Bond in the sum of $5,000.
4-24-75	Filed ORDER that on 4-24-75 deft. E. Vassallo be delivered to SDNY Marshal, said marshal shall bring said deft. to Beekman Downtown Hospital for the purpose of visiting his father and returned to Fed. Det. Hdqtrs, etc. Tenney, J.
-24-75	Filed notice of appearance of atty. for deft. Anthony L. Greco.
-24-75	Filed notice of appearance of atty. for deft. Lawrence Goral.
-24-75	Filed notice of appearance of atty. for deft. Murray Lichtman.
-24-75	Filed notice of appearance of atty. for deft. Joseph Lichtman.
5-05-75	Filed writ of habeas corpus ad pros. for Ivan A. Exrine. 4-21-75 writ satisfied. Pierce, J.
5-05-75	Filed true copy of order docketed 4-24-75 and marshal's return executed 4-24-75.
05-16-75n	Filed Govt.'s notice : writ of habeas corpus ad pros. for Edward Vassallo. satisfied 4-21-75 Pierce, J.
05-16-75	Filed Magistrate's orig. papers (V. Ezrine) docket entry sheet, appointme of counsel.
05-30-75	Filed deft. J. Lichtman notice of motion re: bill of particulars, etc.
6-10-75	Filed magistrate's orig. papers: docket entry sheet & appointment of counsel.
6-20-75	Filed memo. of law on behalf of deft. Joseph Lichtman.
6-23-75	Filed magistrate's orig. papers (deft. Carmine Consalvo) docket entry sheet, indictment warrant, disposition sheet, notice of appearance and appearance bond.
6-30-75	Filed deft. Leon Mayers notice of motion re: bill of particulars, produc etc.
-12-75	Ivan Alan Egrine-Produced in Court on writ. Deft. withdraws plea of not guilty and pleads guilty (atty. present) to count 1 only. No pre-sentence investigation ordered. Sentence and writ adj.'d sine die. Tenney, J.
8-15-75	Filed deft. E. Vassallo's notice of motion for speedy trial and for severance.

-cont'd. on next page-

C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order Judgment No.
-2-75 ✓	E. Vassallo-filed deft.'s acknowledgment of constitutional rights.	
-2-75	E. Vassallo-(atty. present) produced on writ. Pleads guilty to count 1 only. Pre-sentence investigation ordered. Sentence adjourned until 10-14-75. Writ adjourned until 10-14-75. Tenney, J.	
03-75 ✓	Filed memo-end. on motion docketed 8-15-75. Motion withdrawn on consent of counsel. Deft. entered a plea of guilty which was accepted by the Court on 9-2-75. Tenney, J. m/n	
8-75 ✓	Filed transcript of record of proceedings, dated 8-12-75.	
0-10-75 ✓	Filed Govt.'s bill of particulars.	
0-10-75 ✓	Filed Govt.'s notice of readiness for trial.	
0-10-75 ✓	Filed Govt.'s memo. re: opposition to motions for a bill of particulars.	
21-75	EDWARD VASSALLO (atty. present) Filed Judgment - deft. committed to the custody of the Atty. Gen'l. for imprisonment for a period of 2 yrs. on count 1. Execution of prison sentence is suspended. Deft. placed on probation for a period of 2 yrs., to commence upon expiration ofconfinement, that the deft. is presently serving at Attica Corr. Facility, subject to the standing probation order ofthis Court. Counts 2 - 18 are dismissedoon motion of deft.'s counsel with the consent of the Govt. Tenney, J. issued all copies.	
-16-75 ✓	Filed ORDER re: deft. E. Vassallo - funeral of father. and marshal's return 10-6-75 deft. brought to funeral home and returned to M.C.C.	
-11-76 ✓	Filed Govt's affdvt. re: opposition to defts.' motion to dismiss.	
11-76 ✓	Filed Govt.'s memo. of law re: opposition to motion to dismiss.	
5-14-76 ✓	Filed Govt.'s affdvt. re: response to the Courg's inquiry about whether the Govt. was in fact, ready for trial, etc.	
-14-76	Pre-trial conference held. Tenney, J.	
25-76 ✓	Filed deft. Goral's notice of motion to preclude, etc.	
26-76 ✓	Filed affdvt. of William M. Erlbaum re: behalf of J. Lichtman -dismissal of indictment.	
26-76 ✓	Filed reply affdvt. of William M. Erlbaum re: Mr. MacDonald's affdvt. dated 5-7-76.	
5-26-76 ✓	Filed deft L. Mayer's notice of motion to dismiss inidctment.	
5-26-76 ✓	Filed deft. L. Mayer's affdvt. in support of motion.	
-04-76 ✓	Filed deft. L. Mayer's memo. in support of deft's motion to dismiss the indictment.	
-22-76 ✓	Filed deft. L. Goral's notice of motion re: dismiss indictment.	

DATE.	PROCEEDINGS	Date Order Judgment N
8-30-76	Filed deft. Leon Mayer's objection re: dismissal of indictment etc.	
8-30-76	Filed Govt's third omnibus memorandum in opposition to defense motions.	
08-05-76	Filed Opinion # 44930 - ...Accordinly, the motions of all defts. to dismiss for failure of the Govt to comply with Rule 5 of the Plan are denied; Mayer's motion to dismiss for failure to be informed that he was a "target" of the investigation is adjourned pending the receipt by the Court of the affdvt. from the Govt; J. Lichtman's motion to dismiss for pre-indictment delay is denied; Goral's motion to inspect grand jury minutes is denied; the motions of all defts. for Brady material are now moot; motions of all defts. for bills of particulars are denied, except to the extent indicated above; and the Goral and Greco motions to preclude are denied. In addition, it appears to the Court that the Govt. has fulfilled its obligations under Rule 16, subject to its duty to supplement those materials. Tenney, J. m/n	
9-09-76	Filed deft. L. Mayer's notice of motion re: reargument ret: 9-20-76.	
9-27-76	Filed Notice of Appearance of atty. for deft. Murray Lichtman by Harry R. Pollak.	
9-30-76	Filed notice of new address of atty. Melvin Kraft 522 Fifth Ave., New York, N.Y. 10036.	
10-13-76	Filed (deft. Leon Mayer) CJA 20 appointment of counsel Melvin Kraft 36 West 44th St, N.Y.C. 10036 & CJA 23 financail affdvt. Mag. Jacobs. issued all copies	
10-20-76	Filed Opinion # 45267 - Accordingly, the motion of deft. Mayer to dismiss the indictment on the ground that the Govt. was not ready for trial, etc. is denied. Tenney, J. m/n	
10-26-76	Filed deft. Anthony Creco's acknowledgment of constitutional rights.	
10-26-76	Dft. Anthony Creco (atty. Jerold C. Weissfeld) deft. withdraws plea of not guilty and pleads guilty to ct. 1 . P.S.I. ordered. Sent. adj'd until 12-7-76. Bail cont'd. Tenney, J.	
11-03-76	Filed Order to Show Cause: re: dismiss indictment re: non-conpliance with Rule 5, etc. ret: 11-10-76. Tenney, J. (deft. Mayer)	
11-03-76	Filed deft. Mayer's memo. of law re: support of motion to dismiss.	
11-3-76	L. Goral-(atty. Howard Hirschfeld) deft. withdraws plea of not guilty and pleads guilty to ct. 1. P.S.I. ordered. Sent. ajd'd. to 12-15-76. Bail cont'd. Tenney, J.	
11-3-76	L. Goral-filed deft's acknowledgment of consitutional rights.	
11-8-76	Filed Govt's affdt. re: opposition to deft. Mayer's motion to dismiss.	
11-8-76	Filed Govt's memo. of law re: oppose motion to dismiss of Mayer.	

cont'd on next page

DATE	PROCEEDINGS
11-10-76	Filed deft. L. Mayer's reply affdvt. re: affdvt. of V. Fryman.
11-12-76	Filed memo-end. on motion docketed 11-3-76. Deft. Mayer's motion to dismiss indictment...denied. Tenney,J. m/n
11-12-76	M. Lichtman-filed deft's acknowledgment of constitutional rights.
11-12-76	J. Lichtman-filed deft's acknowledgment of constitutional rights.
11-12-76	Murray Lichtman (atty. Harry Pollack) deft. withdraws plea of not guilty and pleads guilty to ct. 1 only. Pre-sentence investigation ordered. Sent. adj'd. until 12-15-76. Bail cont'd. Tenney,J.
11-12-76	Joseph Lichtman (atty. Wm. Elbaum) deft. withdraws plea of not guilty and pleads guilty to ct. 1 only. Pre-sentence investigation ordered. Sent. adj'd. until 12-15-76. Bail cont'd. Tenney,J.
11-16-76	Filed transcript of record of proceedings, dated Sept. 13, 1976.
11-16-76	Filed transcript of record of proceedings, dated Oct. 26, 1976.
11-18-76	Filed transcript of record of proceedings, dated Sept. 20, 1976.
11-18-76	Filed transcript of record of proceedings, dated Aug 2, 1976.
11-18-76	Filed transcript of record of proceedings, dated Oct 15, 1975.
11-15-76	Leon Mayer-(atty. Melvin D. Kraft) jury trial begun before Judge Tenney.
11-16-76	Trial cont'd.
11-17-76	Trial cont'd.
11-18-76	Trial cont'd. Cts. 2,3,4,&10 dismissed on deft's motion with consent of the Govt.
11-19-76	Trial cont'd.
11-22-76	Trial cont'd.
11-23-76	Trial cont'd.
11-24-76	Trial cont'd. Jury find the deft. guilty on each of cts. 1,5,6,7,9,11,12,13,14,15,16,17 & 18. Pre-sentence investigation ordered. Sent. adj'd. until 1-17-77. Bail fixed in the sum of $5,000. P.R.B. to be co-signed by the defts' brother. Bond to be signed by 11-29-76. Tenney,J.
11-26-76	Leon Mayer-filed $5,000. unsecured personal recognizance bond.
12-2-76	Filed deft. L. Mayer's memo. of law re: support of motion for bill of particulars.
12-2-76	Filed deft. L. Mayer's motion for a bill of particulars.
12-2-76	Filed deft. L. Mayer's notice of motion re: discovery and inspection.
12-2-76	Filed notice of motion of deft. Greco re: motion to preclude and to dismiss indictment.
12-2-76	Filed deft. Greco's memo. of law re: support of motion for dismissal.

DATE	PROCEEDINGS
12-2-76	Filed deft's L. Goral's motion to inspect Grand Jury minutes and for a bill of particulrs,etc.
12-10-76	Filed Order that pur. to Rule 6(e) FRCP the U.S. Atty. is authorized and directed to furnish to F. H. Block a copy of the transcript of deft's testimony before the Grand Jury. Tenney,J. issued copies m/n
12-15-76	Lawrence Goral- Filed Judgment (atty. Howard Hirschfeld) 2 yrs. impr. E.S.S. on ct. 1. Deft. placed on probation for a period of 2 yrs. w/super. Cts. 2-18 incl. dismissed on deft's motion. Tenney,J. issued all copies.
12-15-76	Anthony L. Greco,Jr. -filed Judgment (atty. Jerold C. Weissfeld) 2 yrs. impr. on ct. 1. E.S.S. 2 yrs. prob. w/suber. Cts. 2-18 incl/ dismissed on deft's motion. Tenney,J. issued all copies.
12-17-76	Filed transcript of record of proceedings, dated Nov.15,16,17,18,1976 Nov.19,22,1976.
12-17-76	Filed transcript of record of proceedings, dated Nov.23,24, 1976.
1-17-77	Leon Mayer-filed JUDGMENT (atty.Melvin D. Kraft) Ct.1 - 2 mos. impr. Cts. 5,6,7,9,11-18 - 2 yrs. impr. ea. ct. E.S.S. on cts. 5,6,7,9,11-18 2 yrs. prob. w/super. Deft. is cont'd. on bail until 2-7-77. Tenney,J. issued all copies. #77,199
01-17-77	Filed Judgment (atty. Frederick H. Block) Deft. Ivan Alan Ezrine: Ct. 1- 3 yrs. impr. E.S.S. 5 yrs. prob. w/super, and FINED $2,000. non-committed fine. Cts. 2-18 incl dismissed on deft's. motion. Tenney,J. issued all copies.
01-21-77	L. Mayer- filed memo. of law re: sentencing.
01-21-77	Filed one envelope ordered sealed (containing 2 pages) by Judge Tenney.
01-24-77	Filed one envelope ordered sealed (containing pages 11 through 35) by Judge Tenney.
01-25-77	Leon Mayer-filed notice of appeal from judgment of 1-17-77. Mailed copies.
01-26-77	Filed Govt's request to charge (Clark Bracewell)
02-03-77	Filed affdvt. of Harold F. McGuire,Jr. re: sentencing of Joseph Lichtman.
02-03-77	Filed memo. of deft. Joseph Lichtman re: pre-sentence memoandum.
02-03-77	Leon Mayer-filed CJA 23 appointment of Trial investigator- Fidelifacts Metropolitan N.Y.C. Tenney,J. issued all copies
2-03-77	Leon Mayer-filed CJA 23 approval for payment of fees of expert. Tenney,J. issued copies.

cont'd. on page 7

DATE	PROCEEDINGS
02-03-77	Ivan Ezrine-filed CJA 20 approval for payment of fees of atty. Frederick H. Block,Esq. Tenney,J. issued all copies.
02-02-77	Joseph Lichtman-(atty. William M. Erlbaum) 2 yrs. impr. and FINED $1,000. on ct. 1. E.S.S. 2 yrs. prob. w/super. Fine is to be paid on a schedule to be arranged with the probation department. Deft. is not to be committed for non-payment of the fine. Cts. 2-18 dismissed on deft's motion. Tenney,J. issued all copies.
02-02-77	Murray Lichtman-(atty. Harry Pollak) Filed Judgment- 2 yrs. impr. on ct. 1. E.S.S. 2 yrs. prob. w/super. Cts. 2-18 dismissed on deft's motion. Tenney,J. issued all copies.
02-03-77	Filed transcript of record of proceedings, dated: Nov. 3, 1976. (deft. L. Goral)
02-03-77	Filed transcript of record of proceedings, dated: Nov. 12, 1976. (defts. Joseph & Murray Lichtman)
02-03-77	Filed transcript of record of proceedings, dated: December 15, 1976. (defts. Lawrence Goral & Anthony L. Greco,Jr.)
02-03-77	Filed transcript of record of proceedings, dated: Jan. 17, 1977. (deft. Ivan Ezrine)
02-03-77	Filed transcript of record of proceedings, dated: Nov. 11, 1976. (defts. J. Lichtman, M. Lichtman & L. Mayer)
02-8-77	Filed stipulation designating certain exhibits to bettransmitted to U.S.C.A.; and the inclusio of certain documents,pursuant to Rule 10(e) FRAP, as part of record on appeal.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By
Deputy Clerk

MCMacD:lg
5-73

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, :

- v - :

IVAN ALAN EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, LEON MAYER, EDWARD VASCALLO, LAWRENCE GORAB, and ANTHONY L. GRECO, JR., :

Defendants. :

- - - - - - - - - - - - - - - - - - - -x

75 CRIM. 363

INDICTMENT

75 Cr.

The Grand Jury charges:

INTRODUCTION

1. At all relevant times herein, Minute Approved Credit Plan, Inc. ("MACP") was a New York corporation with offices at 2 Ralph Avenue, Brooklyn, New York. Its business was the purchase of retail installment contracts.

2. At all relevant times, the defendant JOSEPH LICHTMAN was the President of MACP and a member of its Board of Directors.

3. At all relevant times, the defendant MURRAY LICHTMAN was the Secretary-Treasurer of MACP and the Chairman of its Board of Directors.

4. At all relevant times, the defendant IVAN ALAN EZRINE ("EZRINE") was an attorney admitted to practice by the State of New York.

5. At all relevant times, the defendant LEON MAYER ("MAYER") was employed as a registered representative by A. C. Kluger & Co., a New York, New York securities broker-dealer registered as such with the SEC, and a MACP underwriter.

6. At all relevant times, the defendant EDWARD VASALLO ("VASALLO") was not regularly employed.

COUNT ONE

I. THE CONSPIRACY

1. From on or about the 1st day of May, 1971, and continuousl thereafter up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, MAYER, VASALLO, GORAL and GRECO, the defendants and Michael Hellerman ("Hellerman") and Sidney Stein ("Stein"), named herein as co-conspirators but not as defendants, and other persons to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to defraud the United States and to violate Sections 1001, 1341 and 1343 of Title 18, United States Code and Sections 77e, 77q, 77x, 78j and 78ff of Title 15, United States Code and 17 C.F.R. §230.256 and §230.10b.

II. THE OBJECT OF THE CONSPIRACY

2. The object of the conspiracy was to sell and distribute shares of MACP to members of the public while fraudulently concealing and falsifying material information required to have been fairly and truly disclosed.

III. THE MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT.

3. Among the means by which the defendants and their co-conspirators would and did carry out the conspiracy were the following:

(a) Prior to 1971, the defendants JOSEPH LICHTMAN and MURRAY LICHTMAN had, while publicly and openly employing an underwriter registered with the SEC to sell and distribute 100,000 MACP shares to the investing public, secretly paid the defendant EZRINE large sums of cash to bribe brokers for selling MACP shares. At no time was any disclosure made of such cash pay-offs, neither in registration statements filed with the SEC nor to prospective purchasers. Nevertheless, because of the failure to sell all 100,000 shares as required

by the "best efforts or none" underwriting contract, the distribution was aborted and the registration statement was withdrawn.

(b) During the period May, 1971, through August 1972, the defendants JOSEPH LICHTMAN and MURRAY LICHTMAN hired, with secret cash bribes, the defendant EZRINE and the co-conspirators Stein and Hellerman to sell MACP shares. At that time, the defendant EZRINE had been enjoined from engaging in fraudulent conduct and practices in connection with the purchase and sale of securities, the co-conspirator Stein had been convicted of a crime involving the purchase and sale of securities, and the co-conspirator Hellerman had been both enjoined from fraudulent conduct and practices in connection with purchases and sales of securities and also convicted of a crime involving the purchase and sale of securities.

None of the MACP shares to be sold were registered with the SEC because the defendants JOSEPH LICHTMAN and MURRAY LICHTMAN had obtained an exemption from registration by filing an exemption notification and offerring circular each of which fraudulently disclosed nothing of the aforementioned secret cash bribes, injunctions and convictions.

(c) The defendants MURRAY LICHTMAN and JOSEPH LICHTMAN delivered $20,000.00 cash as "front money" to a stakeholder to be secretly disbursed to the co-conspirator Stein and the defendant MAYER, who had agreed to induce A.C. Kluger & Co. to underwrite the offering, at a rate of $0.80 per MACP share sold.

(d) The defendant JOSEPH LICHTMAN agreed to pay the defendant EZRINE and the co-conspirator Hellerman $42,500 to falsely purchase MACP shares through nominees in order to bring the total to the 50,000 shares required to be sold by the "best efforts 50% or none" underwriting contract.

rms

(e) The defendants EZRINE, JOSEPH LICHTMAN, GORAL, GRECO, MAYER and VASALLO, together with the co-conspirators Hellerman and Stein, falsified purchases of approximately 30,000 shares of MACP by advancing $150,000 under a secret agreement that MACP would repay such amounts.

(f) The defendant JOSEPH LICHTMAN falsely reported to the SEC that on July 17, 1972, 50,000 shares of MACP had been sold to the underwritier's customers when, in truth and in fact only approximately 20,000 shares had actually been sold.

IV. OVERT ACTS

4. In furtherance of the conspiracy and to effect the objects thereof, the defendants and their co-conspirators committed the following overt acts among others in the Southern District of New York and elsewhere:

(1) On or about December 14, 1971, MURRAY LICHTMAN, the defendant, at a meeting with the defendant MAYER and co-conspirator Stein, agreed to pay them secret underwriting commissions.

(2) On or about January 28, 1972, $20,000 in United States currency was delivered to one Leon Rafalowicz to be secretly paid to the defendant MAYER and the co-conspirator Stein.

(3) On or about February 10, 1972 and June 12, 1972, the defendants JOSEPH LICHTMAN and MURRAY LICHTMAN caused false and fraudulent MACP offering circulars to be filed with the New York regional office of the SEC.

(4) On or about July 17, 1972, the defendant MAYER transmitted $215,000 to the defendants JOSEPH and MURRAY LICHTMAN at the closing on the sale of the 50,000 MACP shares while concealing the fraudulent character of such sales from those present.

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(5) On or about July 19, 1972, the defendant JOSEPH LICHTMAN caused MACP to pay $25,000 of the offering proceeds to Ronmar Credit Corp. in satisfaction of his personal guarantee on an indebtedness of another company, Merchants Associated Credit Plan, Inc., owned and controlled by him.

(6) On or about August 8, 1972, the defendants JOSEPH and MURRAY LICHTMAN caused MACP to pay $25,000 of the offering proceeds to the Bankers Trust Company in partial satisfaction of their personal guarantees of a MACP indebtedness to such bank.

Each of the mailings and telephone usages alleged in Counts Two through Eleven of this Indictment are repeated and realleged herein as overt acts.

V. STATUTORY ALLEGATIONS

5. It was further a part of said conspiracy that the defendants would, in a matter within the jurisdiction of a department and agency of the United States, to wit, the S.E.C., knowingly and wilfully falsify, conceal and cover up by tricks, schemes and devices material facts, make false, fictitious and fraudulent staements and representations, and make and use false writings and documents knowing the same to contain false, fictitious and fraudulent statements and entries, in violation of Title 18, United States Code, Section 1001.

6. It was further a part of said conspiracy that the defendants, having devised and intending to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, would unlawfully, wilfully and knowingly and for the purpose of executing said scheme and artifice and attempting so to do, cause to be delivered by mail according to he direction thereon, certain matter to be sent and delivered by the Postal Service, in violation of Title 18, United States Code, Section 1341.

(5) On or about July 19, 1972, the defendant JOSEPH LICHTMAN caused MACP to pay $25,000 of the offering proceeds to Ronmar Credit Corp. in satisfaction of his personal guarantee on an indebtedness of another company, Merchants Associated Credit Plan, Inc., owned and controlled by him.

(6) On or about August 8, 1972, the defendants JOSEPH and MURRAY LICHTMAN caused MACP to pay $25,000 of the offering proceeds to the Bankers Trust Company in partial satisfaction of their personal guarantees of a MACP indebtedness to such bank.

Each of the mailings and telephone usages alleged in Counts Two through Eleven of this Indictment are repeated and realleged herein as overt acts.

V. STATUTORY ALLEGATIONS

5. It was further a part of said conspiracy that the defendants would, in a matter within the jurisdiction of a department and agency of the United States, to wit, the S.E.C., knowingly and wilfully falsify, conceal and cover up by tricks, schemes and devices material facts, make false, fictitious and fraudulent staements and representations, and make and use false writings and documents knowing the same to contain false, fictitious and fraudulent statements and entries, in violation of Title 18, United States Code, Section 1001.

6. It was further a part of said conspiracy that the defendants, having devised and intending to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, would unlawfully, wilfully and knowingly and for the purpose of executing said scheme and artifice and attempting so to do, cause to be delivered by mail according to he direction thereon, certain matter to be sent and delivered by the Postal Service, in violation of Title 18, United States Code, Section 1341.

73

and cause to be used false and misleading, in light of the circumstances then existing, statements in a written offer of MACP securities, to wit, an offering circular filed with the SEC under Title 15, United States Code, Section 77s and Rule 256 [17 C.F.R. 230.256] and Form 1A, Schedule 1 promulgated thereunder.

11. It was further a part of said conspiracy that the defendants would, unlawfully, wilfully and knowingly, directly and indirectly, make use of means and instruments of transportation and communication in interstate commerce and of the mails to sell and would carry and cause to be carried through the mails and in interstate commerce and by means and instruments of transportation for the purpose of sale and for delivery after sale, securities, namely MACP stock, at a time when no registration statement was in effect with the United States Securities and Exchange Commission, in violation of Title 15, United States Code, Sections 77e, and 77x.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH ELEVEN

The Grand Jury further charges:

1. From on or about the 1st day of May, 1971, up to and including the date of the filing of this Indictment, the Southern District of New York and elsewhere, the defendants EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, MAYER, VASALLO, GORAL and GRECO, unlawfully, wilfully and knowingly having devised and intending to devise a scheme and artifice to defraud purchasers of MACP securities, and to obtain money and property by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing said scheme and artifice and attempting so to do, did place and cause to be placed in post offices and authorized depositories for mail matter, take and receive therefrom, and did cause to be delivered by mail according to the directions thereon certain mail matter as hereinafter set forth to be

sent and delivered by the Post Office Department, and did transmit and cause to be transmitted by means of wire and radio communications in interstate and foreign commerce, certain telegrams and telephone calls addressed as indicated.

2. The allegations contained in Count One of this Indictment are repeated and realleged as some of the means employed as though fully set forth herein.

3. On or about the dates hereinafter set forth in Counts Two through Eleven in the Southern District of New York,, said defendants unlawfully, willfully and knowingly did place and cause to be placed in post offices and authorized depositories for mail and did cause to be delivered by mail according to the directions thereon, and did transmit and cause to be transmitted by means of wire and radio communications in interstate commerce, writings, signs, signals, pictures and sounds, between the addresses and instruments as hereinafter set forth:

COUNT	DATE	ADDRESSOR	ADDRESSEE	MEANS
2	Dec. 13, 1971	L. Mayer 212-757-1759	S. Stein 305-865-3860	Telephone
3	June 21, 1972	A.C. Kluger & Co. 200 East 42nd St. New York, N.Y. 10017	Harold Ochstein c/o Aetna Life 666 Fifth Avenue New York, N.Y.	Mail
4	June 30, 1972	M. Hellerman 212-631-0296	E. Vasallo 201-477-2364	Telephone
5	July 11, 1972	M. Hellerman 212-631-0296	A.L. Greco, Jr. 201-477-4455	Telephone
6	August 14, 1972	A.C. Kluger & Co. 200 East 42nd St. New York, N.Y. 10017	Morris Kaufman 303 Beverly Road Brooklyn, New York 11218	Mail
7	August 14, 1972	A.C. Kluger & Co. 200 East 42nd St. New York, N.Y. 10017	Lujfa Bernstein 504 Hicksville Rd. Far Rockaway, N.Y.	Mail
8	August 14, 1972	I.A. Ezrine 516-922-3644	L. Goral 201-477-1300	Telepl
9	August 16, 1972	A.C. Klugar & Co. 200 East 42nd St. New York, N.Y. 10017	Fred De John 4 Washington Village New York, N.Y.	Mail

-73-

10	August 24, 1972	A.L. Greco, Jr. 201-477-4455	I.A. Ezrine 212-867-4986	Telephone
11	August 24, 1972	A.C. Kluger & Co. 200 East New York, N.Y. 10017	Fred De John 4 Washington Sq. Village New York, N.Y.	Mail

(Title 18, United States Code, Sections 1341 and 1343).

COUNTS TWELVE THROUGH FOURTEEN

The Grand Jury further charges:

1. From on or about the 1st day of May, 1971, and continuously thereafter up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, the defendants EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, MAYER, VASALLO, GORAL and GRECO, unlawfully, willfully and knowingly in the offer and sale of securities, to wit, shares of MACP, by the use of means and instruments of transportation and communications in interstate commerce and by use of the mails, directly and indirectly, (a) did employ devices, schemes and artifices to defraud; (b) did obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) did engage in transactions, practices and courses of business which would operate and did operate as a fraud and deceit upon the purchasers of said securities.

2. The allegations contained in Count One of this Indictment are repeated and realleged as some of the means employed, as though fully set forth herein.

3. On or about the dates hereinafter set forth in Counts Twelve through Fourteen in the Southern District of New York, said defendants unlawfully, willfully and knowingly did use and cause to be used, means and instruments of transportation and communication in interstate commerce and the mails, pursuant to and in furtherance of the scheme

-73

alleged in these Counts Twelve through Fourteen, in connection with the following sales and distributions of MICP shares:

COUNT	DATE	PURCHASER	NUMBER OF SHARES
12	June 29, 1972	Lujfa Bernstein 504 Hicksville Road Far Rockaway, New York	200
13	April 21, 1972	William A. Prinsell 9303 Shore Road Brooklyn, New York 11209	100
14	March 24, 1972	Morris Kaufman 303 Beverly Road Brooklyn, New York	2000

(Title 15, United States Code, Sections 77q and 77x).

COUNTS FIFTEEN THROUGH SEVENTEEN

The Grand Jury further charges:

On or about the dates hereinafter set forth in Counts Fifteen through Seventeen, in the Southern District of New York, the defendants EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, MAYER, VASALLO, GORAL and GRECO unlawfully, wilfully and knowingly, directly and indirectly, made use of means and instruments of transportation and communication in interstate commerce and of the mails to sell, and to deliver after sale, MACP securities, as hereinafter set forth, no registration statement as to such securities being in effect with the SEC.:

COUNT	DATE	PURCHASER	NUMBER OF SHARES
15	June 29, 1972	Lujfa Bernstein 504 Hicksville Road Far Rockaway, New York	200
16	April 21, 1972	William A. Prinsell 9303 Shore Road Brooklyn, New York 11209	100
17	March 24, 1972	Morris Kaufman 303 Beverly Road Brooklyn, New York	2000

(Title 15, United States Code, Section 77e and 77x).

D-73

COUNT EIGHTEEN

The Grand Jury further charges:

On or about the 19th day of July, 1972, in the Southern District of New York the defendants, EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, MAYER, GORAL, GRECO and VASALLO, in a matter within the jurisdiction of a department and agency of the United States, to wit, the SEC, unlawfully, wilfully and knowingly did make and cause to be made false, fictitious and fraudulent statements and representations in the Fifth Post-effective Amended Notification under Regulation A Form 1-A, to wit, the report that on July 17, 1972, 50,000 MACP shares of the 100,000 shares offered had been sold to customers of A.C. Kluger & Co. for $250,000 less $35,000 commissions and allowances whereas in truth and in fact, as the defendants then and there well knew, such sales had not occurred.

(Title 18, United States Code, Section 1001).

Foreman

Paul J. Curran

PAUL J. CURRAN
United States Attorney

12-15-76 (Graco, Jr.) atty and deft present)- Jerold C. Weissfeld,Esq

deft sent to 2 years on count 1. Execution of sentence suspended. deft placed on probation for a period of 2 years, subject to the standing probation order of this Court. cts 2 through 18 dismissed on motion of deft's counsel with the consent of the Government.

Tenney,J.

12-15-76 (Goral)- Atty and deft present)-Howard Hirschfeld, Esq.

Deft sent to 2 years on count 1. Execution of sentence suspended. deft placed on probation for a period of 2 years, subject to the standing probation order of this Court. cts 2 through 18 are dismissed on motion of deft's counsel with the consent of the Government

Tenney,J.

1-17-77 Mayer, Atty and deft present- Melvin D. Kraft,Esq

deft sent to 2 months, ct 1 & 2 years, on each of cts 1,5,6,7,9 11 thru 18 to run concurrently witheach other.Execution of sent c cts 1,5,6,7,9,11 thru 18 is suspended. deft placed on prob for a period of 2 years, to commence upon expiration of confinema imposed on ct 1. deft is continued on his present bail until 2-7-77 at which time he is to surrender to the U.S. marshal in room 506. Tenney,J.

1-7-77 Ezrine, Atty and deft present- Frederick H. Block, Esq

deft sent to 3 years, on count one. Execution of sentence suspended. deft place on probation for a period of 5 years, subject to the standing probation order of this Court.

-and-

FINED$2,000., to be paid on a schedule to be arrnged with the probation department.
deft is not to be committed for non-payment of the fine.

Sentence to run concurrently with parole and probation already imposed upon the deft in other jurisdictions.

cts 2 thourgh 18 are dismissed on motion of deft's counsel with the consent of the Government.

Tenney,J.

Deft. Lawrence Green pres. (Cathy Gould) and Hon. Clyde
deft enter plea of G. Bail fixed at $5,000 PB!
(Anchor Surety).
Deft. Anthony L. Green Jr. pres. (Cathy Gould) and Hon. Clyde
deft. pleads N/G. Bail fixed at $2,500 PB. Cond.
Will depts. ordered. F/P.

Pierce-T.

8/12/75 Joan Alan Cipine - Produced in Court with Atty Robert Udell. Deft withdrew plea of not guilty & pleads guilty (Atty Robert Udell) to count 1 only. Deft pre-sentence investigation ordered. Sentence 2 wks adjd

Jenner

9/2/75 - Edward Vasallo - (Atty Plaunt) - Produced in Court. P/G to one (1) count Presentence investigation ordered. Sentence set for 10/14/75 at 9:30 a.m.

10/14/75 - Edward Vasallo - (Atty Plaunt) - Deft sent to 2 years, on Count 1. E.S.S. Deft placed on probation for a period of 2 years, To commence upon his release from prison. Deft to be delivered to Kennedy Study Center, Vacaville, California. Deft to stay 2 weeks for evaluation - results of report to Court - Deft to report to Court upon release.

Tenney

5/14/76 - Pretrial Conference held - Tenney

Joseph - Anthony Bea 20, Jr. Trial C.
Def. Field, Gy
Defendant Duly Present -
Defendant and D plea of not Guilty
to Count one (1) and Found Guilty
to Count one - Pre Sentence Investigation
ordered Sentence adj'd until
12/7/76 Bail Continued - Tenney J.

11/3/76 - Lawrence Zoral - (Howard Hirschfeld
Deft & atty present -
Defendant w/D plea of not guilty Cg. 6.
to Count one & plead guilty to
Count one - pre-Sentence Investigation
ordered - Sentence adj'd until 12/15/76
Bail continued - Terms/D

11/12/76 - Sonnino Lichtman (Harry Bellak, Esq.)
Deft & atty present -
Deft w/D plea of not guilty &
plead guilty to Count one (1) only
pre-Sentence investigation ordered.
Sentence adj'd until 12/15/76
Bail continued, Terms/D

11/12/76 Joseph Lichtman (William Cottman Esq.)
Deft & atty present -
Deft w/D plea of not Guilty
& plead guilty to Count one (1)
only - pre-sentence investigation
ordered - Sentence adj'd until 12/15/76
R.O.R. continued - Terms/D

Form No. USA-33s-274 (Ed. 9-25-58)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

IVAN ALAN EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, LEON HAYER, EDWARD VASSALLO, LAWRENCE GORAL, and ANTHONY L. CRECO, JR.,

INDICTMENT

15, U.S.C. §§77q and 77x
18, U.S.C. §§371, 1001, 1341, and 1343

PAUL J. CURRAN

United States Attorney.

A TRUE BILL

Foreman.

PPI—SS—1-13-70—2015—4925

U.S. DISTRICT COURT
FILED
APR 11 1975
S. D. OF N.Y.

4-21-75 Deft Edward Vassallo pres Ken Kelly present) (Def proceeded on) Court enters plea of N/G to Tenney, J. 20 days Sec fixed by Court at $5,000 PR Bond wife.

Deft Ivan Allan Ezeine pres. (Atty pres) Court enters plea of N/G. (Def proceeded on a Writ.) Bail fixed by Court at $5,000 P.R. Bond to be signed by Mother Father. Cashier Surety

Both defts. Vassallo and Ezeine Remanded in lieu of Bail

Deft Joseph Liebman pres (Atty Earl Brown pres) Deft enters plea of N/G. Bail fixed at $5,000 P.R.B. Cashier Surety.

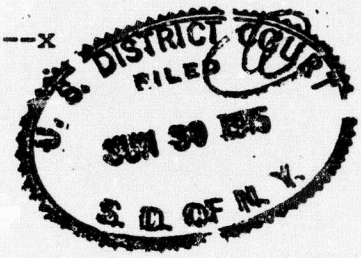
Deft Murray Lebtinan pres. (Atty George Messe pres) Deft enters plea of N/G. Bail fixed at $5,000 P.R.B cashier Surety.

Deft Leon Mayer pres (Atty not present) Ct. enters plea of N/G Bail fixed at $5,000 P.R.B. Cashier Surety.

TRUE COPY ATTEST: Clerk
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x



UNITED STATES OF AMERICA,

Plaintiff,

-against-

: 75 Cr. 363

IVAN ALAN EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, LEON MAYER, EDWARD VASSALLO, LAWRENCE GORAL, AND ANTHONY L. GRECO, JR.,

: NOTICE OF MOTION

: (CHT)

Defendants.

---x

PLEASE TAKE NOTICE that, upon the indictment and all prior proceedings had herein, defendant Leon Mayer will move this Court, at a future date time and place to be fixed by the Court, for an order pursuant to Rules 7(f), 12 and 16 of the Federal Rules of Criminal Procedure:

(1) directing the filing of a bill of particulars as set forth in the accompanying affidavit of Melvin D. Kraft; and

(2) directing the production of those documents described in the accompanying affidavit of Melvin D. Kraft, pursuant to Rule 16 of the Federal Rules of Criminal Procedure; and

(3) directing the United States to state whether it has any material which constitutes evidence or refers to or may lead to the discovery of evidence which tends or may tend to exculpate defendant Mayer of the charges set forth in the indictment herein; and if the United States has any such material, directing it to produce the same; and, if the

United States has no such material, directing it to so state; and

(4) for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
June 27, 1975

MELVIN D. KRAFT, P.C.
Attorney for Defendant
Leon Mayer
36 West 44th Street
New York, New York 10036
(212) 575 - 7800

TO: W. CULLEN MacDONALD, ESQ.
Assistant United States Attorney
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

6025

UNITED STATES OF AMERICA,

Plaintiff,

-against-

75 Cr. 363

IVAN ALAN EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, LEON MAYER, EDWARD VASSALLO, LAWRENCE GORAL, and ANTHONY L. GRECO, JR.,

Defendants.

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MELVIN D. KRAFT, being duly sworn, deposes and says:

1. I am attorney of record for defendant Leon Mayer, and I make this affidavit in support of defendant Mayer's motion for an order pursuant to Rules 7(f), 12, and 16 of the Federal Rules of Criminal Procedure, and for exculpatory material and other relief.

2. The indictment herein, filed April 11, 1975 charges defendant Leon Mayer ("Mayer") and six co-defendants with eighteen counts of conspiracy, mail and wire fraud, securities fraud, sale of unregistered securities, and fraud in a matter within the jurisdiction of an agency of the United States. The "object" of the alleged conspiracy, as described in subdivision II of Count One of the indictment, was "to sell and distribute shares of [Minute Approved Credit Plan, Inc.] stock while fraudulently concealing and falsifying material information required to have been fairly

and fully disclosed." This alleged fraudulent scheme involving the offering of Minute Approved Credit Plan, Inc. ["MACP"] stock in 1972 is at the center of the allegations of Counts Two through Eighteen, charging various substantive offenses.

3. At the time of the acts alleged in the indictment, i.e., December 1971 - August, 1972, Mayer was a registered representative with A. C. Kluger & Co., a broker-dealer of securities and the underwriter for the 1972 offering of MACP stock which is at the heart of the indictment. His co-defendants include the two principals of the issuer, MACP, and four people unknown to Mayer.

4. Upon Mayer's arraignment, I was appointed to serve as his counsel under the Criminal Justice Act. Shortly thereafter, on May 5, 1975 I sent a letter to the Assistant United States Attorney requesting: a bill of particulars; all written or recorded statements made by Mayer to the Government; grand jury transcripts; certain documents referred to in the indictment; and exculpatory material under Brady v. Maryland. A copy of that letter is annexed hereto as Exhibit "A", and respectfully incorporated by reference herein.

5. Several weeks later, the prosecutor, herein Mr. MacDonald, sent me some of the above material, to wit, the transcript of Mayer's Grand Jury testimony on March 19, 1975 (the transcript of Mayer's March 21 testimony was received later) various Grand Jury exhibits, the transcript of Mayer's testimony before the Securities and Exchange Commission, and certain other documents. Mr. MacDonald also stated that other unspecified Rule 16(b) material was available for inspection at his office.

Due to scheduling problems on the part of both Mr. MacDonald and myself, such inspection was not arranged until yesterday, June 26, 1975. Although the inspection was begun, it was not completed.

6. Thus, while some discovery has been granted, certain of the discovery materials requested are yet to be supplied.

7. Moreover, I have not yet been served with a bill of particulars nor has the prosecutor supplied any exculpatory material under Brady v. Maryland, or indicated that it has no such material, if that is the case.

8. Only after the discovery materials and bill of particulars described above are received, studied and investigated further will I be in a position, as counsel for defendant Mayer, to determine what other pre-trial motions, including motions to dismiss the indictment or various counts thereof, to suppress evidence, or for a severance, should be made, and whether the facts support the making of such motions.

I do not wish to make such motions on make-weight grounds, nor do I wish to resolve doubts against the making of such motions.

9. Due to the vacation schedules of both Mr. MacDonald and myself, it will not be possible for me to deal with all of these matters until sometime during the month of August. (I will be away from my office during July.) Accordingly, it has been agreed between counsel that defendant Mayer's right to make any and all further motions is reserved until September 1, 1975; the understanding being that a bill of particulars will

be supplied and the discovery described above will be completed before that time.

WHEREFORE, it is respectfully requested that this Court grant defendant Leon Mayer an order pursuant to Rules 7(f), 12 and 16 of the Federal Rules of Criminal Procedure:

1. directing the filing of a bill of particulars as set forth in the accompanying affidavit of Melvin D. Kraft, pursuant to Rule 16 of the Federal Rules of Criminal Procedure; and

2. directing the production of those documents described in the accompanying affidavit of Melvin D. Kraft, pursuant to Rule 16 of the Federal Rules of Criminal Procedure; and

3. directing the United States to state whether it has any material which constitutes evidence or refers to or may lead to the discovery of evidence which tends or may tend to exculpate defendant Mayer of the charges set forth in the indictment herein; and, if the United States has any such material, directing it to produce the same; and, if the United States has no such material, directing it to so state; and

4. for such other and further relief as to the Court may seem just and proper.

Melvin D. Kraft
MELVIN D. KRAFT

Sworn to before me
this 27th day of
June, 1975.

30-288-3125
Expires 3-30-77

0028

May 5, 1975

W. Cullen MacDonald, Esq.
Assistant United States Attorney
United States Attorney's Office
Room 725
One St. Andrew's Plaza
New York, New York 10007

United States of America v. Ezrine,
et al. - 75 Cr. 363

Dear Mr. MacDonald:

Confirming our previous telephone conversation and the one we had this morning, you have indicated that the prosecution will supply to me, as defense counsel for Mr. Mayer, all the material to which Mr. Mayer is entitled without the necessity of formal motions.

As I indicated on the telephone, I have preliminarily reviewed the indictment and, based upon such review, there are certain items of particulars and information which I think would be helpful for me to set down on paper at this time.

The attached listing is not necessarily exhaustive as I hope to investigate the facts of the case more fully in the near future, and also to study the indictment and the relevant statutes involved in conjunction with such factual investigation.

In any event, I have prepared a preliminary schedule of items which I am enclosing with this letter.

As I understand it, you are expecting to take a short vacation in the near future, and that you will be in touch with me upon your return sometime in the

EXHIBIT "A"

latter part of next week.

With reference to the present May 14 deadline for motions, you have indicated that you will not object on grounds of timeliness to any motions that I might be advised to make after that date, in the event we are unable to resolve matters informally. Needless to say, I hope we can resolve all the matters involved informally so that no motions are necessary.

Thank you kindly for your courtesies and cooperation.

Very truly yours,

Melvin D. Kraft

MDK:ce
Enclosure

SCHEDULE OF [illegible]
ATTACHED TO LETTER OF [illegible] KRAFT
TO W. C. MACDONALD, DATED SEP 5, 1975

(U.S.A. v. Ezrine, et al. - 75 Cr. 363)

A. Bill of Particulars (Fed. R. Crim. P. 7(f))

(1) The names of all co-conspirators not named in the indictment who are presently known to the Government and their addresses at the time of their alleged participation in the alleged conspiracy.

(2) Any overt acts not enumerated in the indictment, concerning which acts the Government intends to offer evidence upon the trial of the indictment herein.

(3) The manner in which defendant Mayer is alleged to have falsified purchases of Minute Approved Credit Plan, Inc. ("MACP") stock, and the dates on which such falsification is alleged to have occurred (Count I, Par. III(e)).

(4) The address of the place where the alleged meeting among defendants Mayer and Murray Lichtman and Sidney Stein on December 14, 1971 is alleged to have occurred (Count I, Par. IV (1)).

(5) The name of the person who allegedly gave $20,000 to defendant Mayer as alleged in the indictment, and the date, time, and place of this alleged payment (Count I, Par. IV (2)).

(6) The statements or omissions in the MACP offering circulars which are alleged to be false and fraudulent (Count I, Par. 4(3), Par. 10).

(7) The matters constituting the "fraudulent character of such sales", which defendant Mayer is alleged to have failed to disclose (Count I, Par. 4(4)).

(8) Any material facts allegedly falsified, concealed or covered up, the substance of any false, fictitious or fraudulent statements or representations

allegedly made, and any false writings and documents allegedly made and used which are not described in Paragraphs 3 and 4 of Count One, and concerning which the Government intends to offer evidence upon the trial.

(9) The substance of any untrue statements of material facts and omissions to state material facts allegedly made by which defendants allegedly obtained money and property, which are not described in Paragraphs 3 and 4 of Count One, and concerning which the Government intends to offer evidence upon the trial.

(10) The nature of the participation of defendant Mayer in the mail and telephone communications alleged in Counts Three through Eleven, inclusive, of the indictment.

(11) The names and addresses of any witnesses who testified before the grand jury whom the Government does not intend to call as witnesses upon the trial of this indictment.

(12) A copy of each and every matter named in Counts Two through Seventeen, inclusive, of the indictment, including any and all envelopes in which it is claimed such matter was mailed or received (U.S. v. Pilnick, 267 F. Supp. 791, S.D.N.Y. 1967).

B. Request for Discovery and Inspection (Fed. R. Crim. P. 16)

Please produce for inspection and copying the following matter:

(1) All written or recorded statements made by defendant Mayer to the United States Attorney's Office or to the Securities and Exchange Commission, within the possession, custody, or control of the Government.

(2) Recorded testimony of defendant Mayer before the grand jury; and that of the other witnesses who will testify for the Government at the trial.

(3) The MACP offering circulars filed on or about February 10, 1972 and June 12, 1972.

BEST COPY AVAILABLE

(4) The Fifth Post-effective Amended Notification under Regulation A, Form 1-A, filed on or about July 19, 1972, described in Count Eighteen of the indictment.

C. Request for Exculpatory Material (Brady v. Maryland)

Please produce all material in the files of the United States Attorney's Office, or any other Government agency, which constitutes evidence or refers to or may lead to the discovery of evidence which tends to exculpate defendant of the charges set forth in the indictment.

MDK:ce

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OCT 10 1975

----------X

UNITED STATES OF AMERICA :

-v- :

IVAN ALAN EZRINE, et al., :

Defendants. :

----------X

NOTICE OF READINESS FOR TRIAL

75 Cr. 363

C.H.T.

S I R S:

PLEASE TAKE NOTICE that the United States will be ready for trial in this case as soon as the matter can be reached by the Court.

Dated: New York, New York

October 9, 1975

Yours, etc.,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

By: Eugene F. Bannigan
EUGENE F. BANNIGAN
Assistant United States Attorney

TO: HONORABLE Charles H. Tenney
United States District Judge
United States Courthouse
Foley Square
New York, New York 10007

Jerold C. Weissfeld, Es
160 Broadway
New York, N. Y. 10038

Melvin D. Kraft, P.C.
Bar Building
36 West 44th Street
New York, New York 10036

(20)

no written indication of a revocation of this invitation to the defendants to come in and examine the documents.

Moving on, then, from the government's voluntary production of documents and statements pursuant to Rule 16 to the motions that the defendants made in this case, the Bannigan affidavit recites the history of those motions, including what motions were made and on what dates and when answered in paragraphs 6 through 9.

THE COURT: Yes.

MR. TIMBERS: The sum total of that analysis is that on October 10, 1975, when the notice of readiness was filed, there were only two motions that were outstanding. All the other motions had either been disposed of or become moot in some way.

Now, before I get into the significance of those two motions, let me say that when this case was assigned to me I asked Mr. Bannigan whether there were any outstanding motions. This would have been around January 1976, shortly before Mr. Bannigan left the office, and Mr. Bannigan told me no. I answered all the motions last October.

Now, I have --

THE COURT: Yes, but-I don't want to interrupt you, but you were informed by my office that we could not set a trial date in this case -- you were asking to have a

trial date set sometime back in January or February -- until these outstanding motions had been decided and that we could not decide them just on one set of papers, and here we are in the middle of May.

MR. TIMBERS: Your Honor, I made that comment because I was focusing on whether in fact the government was ready for trial on October 10, 1975, and the relevance of the comment is that combined with other statements that Mr. Bannigan has made to me, it is my understanding that Mr. Bannigan thought on October 10, 1975, when he filed the notice of readiness, that every motion had been answered. Now, in fact --

THE COURT: He only had one more day before the six month period would have run out, so it seems to me he did it in some haste to comply. He was at the 11th hour, before the six months period would have expired, and I don't think any further comment is necessary.

MR. TIMBERS: I attempted to arrange to have Mr. Bannigan come down today. He has been involved in a jury trial in the Eastern District of New York and has just -- the jury just returned last night. He is unable to come down this morning, but I believe that he would be perfectly willing to come down and to explain to the court what the situation was on October 10, 1975, as far as those two un-

answered motions are concerned.

But let me state that it is the government's position that whatever Mr. Bannigan's negligence or difficulty in locating all the motions was, that even taking the case in the worst possible light for the government, the indictment should not be dismissed for failure to comply with the six-month rule because the two motions that were outstanding were both very negligible motions.

With all due respect to the defendants and the counsel who made them, the first motion that remained outstanding was a motion by Mr. Mayer, a demand by Mr. Mayer for a bill of particulars.

Mr. Bannigan had answered what he thought were all the demands for a bill of particulars. I believe that his bill of particulars is a complete bill of particulars. It provides the defendants with all the information they need to defend this case, and that is particularly true when it is taken in conjunction with the very complete and detailed indictment that the government has filed in this case.

Therefore, the failure to --

THE COURT: These are all matters that can be raised appropriately in answering papers. What may seem insignificant to you may seem quite important to the particular defendant who is waiting for a bill of particulars. I am

talking about motions that have been made in a timely fashion. When that is the case, I think the government has an obligation to answer them.

These motions were filed for the most part four months before the six month period ran out.

MR. TIMBERS: I believe Mr. Mayer's motion was filed, submitted to the court as a disputed issue in September, which would be one month before the six month period ran out.

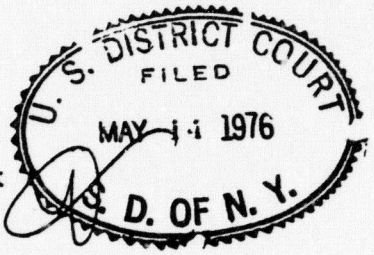
My recollection is that the other unanswered motion which is Mr. --

THE COURT: Mr. Mayer's motion for bill of particulars, for discovery, was filed, according to my record, on June 30, 1975, some three or four months before --

MR. TIMBERS: Your Honor, I think Mr.Mayer has alluded to the history of -- Mr. Mayer's counsel, Mr. Kraft, has alluded to the history of his motion. He filed a notice of readiness in June on the date your Honor has indicated -- I'm sorry, a notice of motion in June on the date your Honor has indicated, but did not file supporting papers, and having read the files, it is my impression that Mr. Kraft and Mr. MacDonald discussed the outstanding motions and negotiated about compliance with them.

The upshot of that was that of the three prongs

JT:wp



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA :

- v - : AFFIDAVIT

IVAN ALAN EZRINE, :
JOSEPH LICHTMAN, : 75 Cr. 363 (CHT)
MURRAY LICHTMAN, :
LEON MAYER, :
EDWARD VASSALO, :
LAWRENCE GORAL and :
ANTHONY L. GRECO, JR., :

Defendants. :

- -x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

EUGENE BANNIGAN, being duly sworn, deposes and says:

1. I am a member of the bar of the State of New York and of this Court. From August, 1972, to February, 1976, I was an Assistant United States Attorney in the office of the United States Attorney for the Southern District of New York. From September, 1975, to February, 1976, I was the Assistant United States Attorney in charge of this case.

2. I submit this affidavit in response to the Court's inquiry about whether the Government was, in fact, ready for trial when it filed its notice of readiness in this case on October 10, 1975.

3. Prior to filing its notice of readiness, the Government had extensively investigated this case. Thus, on information and belief, trial witnesses had been interviewed and documents assembled by Assistant United States Attorney W. Cullen MacDonald, who was in charge of the investigation of this case. The grand jury testimony in this case covers 213 transcript pages. Most of the nine witnesses

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who appeared before the grand jury were also interviewed by Assistant United States Attorney MacDonald. At the same time, documents that fill six file cabinet drawers were assembled during the investigation. In addition, this Office's investigation built upon a related investigation that was conducted by the Securities Exchange Commission ("SEC"). During the SEC investigation 34 witnesses testified under oath, giving 1664 pages of testimony, and introducing 70 exhibits into evidence. Based on the extensive investigation described in this paragraph -- including interviews of trial witnesses and assembling trial exhibits -- the Government was, in fact, prepared to try this case on October 10, 1976.

4. I understand, however, that the Court's inquiry focuses on whether the Government had answered all the defendants' pre-trial motions on October 10, 1975, when it filed its Notice of Readiness. The indictment was filed on April 11, 1975. Thereafter, Assistant United States Attorney MacDonald mailed each defendant a copy of all statements that that defendant had made to the Government, as required by Rule 16(a) of the Federal Rules of Criminal Procedure. Mr. MacDonald also informed all the defendants that, at their convenience, they could inspect the documents in this case at his office. (Copies of Mr. MacDonald's letters are annexed hereto as Exhibit A.)

5. In September, 1975, this case was reassigned from Mr. MacDonald to me. At the time of reassignment, I was writing an appellate brief in United States v. Jack L. Chestnut, Dkt. No. 75-1268, Slip Op. 2439, (2d Cir., March 8, 1976) as well as performing my regular duties as Chief of the Narcotics Unit in the office of the United States Attorney for the Southern District of New York. As soon as I

JT:wp

I finished the appellate brief, I turned to this case, answered what I believed were all the outstanding defense motions, and filed a Notice of Readiness. In particular, I filed a bill of particulars in response to demands by defendants Joseph Lichtman and Anthony L. Greco and I filed a memorandum of law opposing those demands for which the Government did not provide particulars.

6. I did not answer the motions of defendant Edward Vassallo (which had been filed on August 15, 1975) for (1) severance, and (2) a speedy trial because, on September 2, 1975, Vassallo had pled guilty to Count One of the indictment.

7. The only outstanding motion by defendant Leon Mayer was a demand for a bill of particulars. Mayer had previously moved for (1) a bill of particulars; (2) production of documents; and (3) production of Brady v. Maryland material. However, Mayer's attorney, Melvin D. Kraft, Esq., had indicated, in an August 29, 1975, letter to the Court, that items 2 and 3 had been resolved. (A copy of the August 29, 1975, Kraft letter is annexed hereto as Exhibit B.) Due to an inadvertent oversight, caused partly by unfamiliarity with all aspects of the file of this newly-assigned case, I did not respond to Mayer's demand when I responded to those of Greco and Joseph Lichtman.

8. As already mentioned, I answered defendant Joseph Lichtman's demand for a bill of particulars. However, due to an inadvertent oversight, I did not respond to his motion to dismiss the indictment for pre-indictment delay, pursuant to Rule 48 of the Federal Rules of Criminal Procedure.

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9. Defendants Ivan Ezrine, Murray Lichtman, and Lawrence Goral had made no motions at the time the Government's Notice of Readiness was filed. Goral did subsequently file a motion, on October 24, 1975, for a bill of particulars and to inspect grand jury mintues. Of course, Goral's late motion has no bearing on the Government's readiness for trial two weeks before the motion was filed.

10. In summary, at the time the Government filed its Notice of Readiness on October 10, 1975, it had completed an extensive investigation of this case, including interviews of trial witnesses and assembling trial exhibits. Also, the Government had substantially answered the defendants' pre-trial motions and had taken all steps necessary to fulfill its discovery obligations. Thus, the Government had provided the defendants' with their statements, as required by Rule 16(a); it had undertaken to make relevant documents available to the defendants, as required by Rule 16(b); and it had responded to what I believed were all the defendants' motions by filing a bill of particulars and a memorandum in opposition to the unanswered demands. The only unanswered motions were Mayer's demand for a bill of particulars and Joseph Lichtman's Rule 48 motion to dismiss the indictment for pre-indictment delay. These motions which inadvertently remained unanswered when the Government filed its Notice of Readiness do not require dismissal of this indictment. As to Mayer's unanswered demand for a bill of particulars, the Government had provided the defendants with extensive particulars -- both in its detailed indictment and in the bill of particulars that it did file. The Government's unintentional failure to answer this cumulative demand for particulars does not significantly reflect upon its readiness for trial. As to Lichtman's unanswered motion to dismiss for

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pre-indictment delay, the motion is clearly meritless since, as pointed out in the Government's answering papers, Lichtman has alleged no particular prejudice that he suffered as a result of the modest two-year, eight-month period that elapsed between completion of the complicated crime and the filing of the indictment. The Government's inadvertent failure to reply to this motion does not require dismissal of the indictment.

EUGENE BANNIGAN

Sworn to before me this
14th day of May, 1976.

PHILIP ARONSON
Notary Public, State of New York
No. 24-8109585
Qualified in Kings County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- against -

IVAN ALAN EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, LEON MAYER, EDWARD VASSALLO, LAWRENCE GORAL, and ANTHONY L. GRECO, JR.,

Defendants.

----------x

75 Cr. 363 (CHT)

NOTICE OF MOTION TO DISMISS INDICTMENT

PLEASE TAKE NOTICE that upon the indictment and all prior proceedings had herein, defendant Leon Mayer will move this Court at the United States Courthouse, Room No. 1904, on June 7, 1976, at 10:00 A.M., for an Order dismissing the indictment herein on the grounds that:

1. defendant was not informed by the prosecutor, prior to giving his testimony before the Grand Jury, that he was a potential defendant in a felony case involving alleged federal securities laws violations, such omission constituting a violation of the Constitutional rights of defendant Mayer under the Fifth Amendment to the Constitution of the United States of America; and

2. in the alternative, that the prosecutor was not ready for trial within six months from the filing of the indictment, as required by Rule 5 of the Plan For Achieving Prompt Disposition of Criminal Cases adopted by this Court, effective September 29, 1975, pursuant to the requirement of Rule 50(b) of the

Federal Rules of Criminal Procedure;

and for such other and further relief that the Court may deem just and proper.

Dated: New York, New York
May 25, 1976

MELVIN D. KRAFT, P.C.
Attorney for Defendant
Leon Mayer
36 West 44th Street
New York, New York 10036
(212) 575-7800

TO: Robert B. Fiske, Jr.
U.S. Attorney for the
Southern District of New York

John Timbers
Assistant U.S. Attorney for the
Southern District of New York
Of Counsel

Jerold C. Weissfeld, Esq.
Attorney for Defendant
Anthony L. Greco, Jr.
[illegible]0 Broadway
New York, New York 10005

William M. Erlbaum, Esq.
Attorney for Defendant
Joseph Lichtman
123-60 83rd Avenue
Kew Gardens, New York 11415

Howard A. Hirschfeld, Esq.
Attorney for Defendant
Lawrence Goral
225 Broadway
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------*

UNITED STATES OF AMERICA,

-against-

IVAN ALAN EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, LEON MAYER, EDWARD VASSALLO, LAWRENCE GORAL, and ANTHONY L. GRECO, JR.,

Defendants.

MOVING AFFIDAVIT

75 Cr. 363 (CHT)

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STATE of NEW YORK)
: ss.:
COUNTY of NEW YORK)

MELVIN D. KRAFT, being duly sworn, deposes and says:

1. I am a member of the Bar of the State of New York and of this Court. In late April, 1975, I was assigned by this Court to serve as counsel, pursuant to the provisions of the Criminal Justice Act, for defendant Leon Mayer, and have served herein as his counsel since that time, and I am familiar with the proceedings herein which are referred to below.

The indictment charges various defendants with participation in a fraudulent scheme to sell the stock of Minute Approved Credit Plan, Inc. to the public. The brokerage house which is alleged to have offered the stock to the public is A. C. Kluger & Co. which employed defendant Leon Mayer as a registered representative. Various securities laws and other statutes are alleged to have been violated.

2. I respectfully submit this affidavit in support of defendant Mayer's motion to dismiss the indictment herein on the grounds that:

a. the defendant's Fifth Amendment rights were violated by the prosecutor's failure to warn him that he was a potential defendant in a felony securities law case; and

b. in the alternative, that the prosecutor was not, in fact, ready for trial within the six-month period following the filing of the indictment as required by the Plan for Achieving Prompt Disposition of Criminal Cases adopted by this Court, effective September 29, 1975 pursuant to the requirement of Rule 50(b) of Federal Rules of Criminal Procedure.

3. Defendant Mayer on this motion respectfully requests that the Court enter an order dismissing the indictment as to him on the ground that he was effectively deprived of his rights under the Fifth Amendment by reason of the prosecutor's failure to adequately warn him, prior to the giving of his testimony before the grand jury, that he was then subject to possible criminal prosecution, as a defendant, for the commission of specific federal securities felony crimes then being investigated by the grand jury.

We annex hereto as Exhibit A-1 the portion of the grand jury transcript (pp. 30, 31) taken on March 19, 1975 which illustrates the failure of the prosecutor to give the defendant the full and fair warning which we believe is required by the Constitution. In this connection, it will be noted that the prosecutor showed some awareness of this obligation when he stated to the defendant that his answers might be: "...used against you in some later proceedings." (Transcript, p.30) But of course, that vague, amorphous statement was woefully inadequate, on its face, to apprise the lay defendant, who had not consulted with counsel prior to his appearance, of the serious criminal charges he was facing. Indeed, at the conclusion of the defendant's second appearance before the grand jury, he stated:

I don't know in what respect I'm being called over here. I don't know whether I'm being called here as a defendant. I don't know whether I'm being called here as being guilty of something. I don't know whether I'm being called here as a witness. Mr. MacDonald didn't tell me and, therefore, I don't know. (Transcript, March 21, 1975, pp. 33, 34) Exhibit A-2

The record of the defendant's grand jury testimony is permeated with additional evidence that the defendant did not understand the serious personal consequences which could have resulted from his grand jury testimony. In this connection, I respectfully invite the Court's attention to the following facts:

As stated above:

(a) The defendant did not consult with his attorney before his grand jury appearances and his attorney was not available to him during his testimony. (Transcript of March 19, 1975, p. 31) Exhibit A-3

(b) The defendant volunteered to make a second appearance before the grand jury, completely of his own accord, and did so. (Transcript of March 21, 1975, p. 13) Exhibit A-4

(c) The defendant waived his attorney-client privilege with respect to all of his communications with his prior attorneys, Mr. Rich and Mr. Meyer, after consulting only with Assistant United States Attorney MacDonald (Transcript, March 19, 1975, pp. 75, 76): Exhibit A-5

(d) Throughout his testimony, the defendant volunteered information and completed his testimony with a narrative "speech" to the grand jury covering 26 pages of the transcript, interrupted only twice by Mr. MacDonald's inquiries. (Transcript, March 21, 1975, pp. 9-34) Exhibit A-6, first page only attached to avoid undue bulk)

The cumulative impact of all of the foregoing is that this defendant was not only not properly warned of the serious personal consequences of his Fifth Amendment waiver, but was, in fact, wholly unaware of them. The prosecutor's omission was very real and substantial here. It requires dismissal of the indictment as to this defendant.

4. In the alternative, we contend that the indictment should be dismissed on the ground that the prosecutor was not ready for trial within six months from the filing of the indictment. The filing occurred on April 11, 1975. Although the prosecutor did, in fact, file a paper entitled "Notice of Readiness for Trial" on or about October 9, 1975, which was the last day, or next-to-the-last day of the six-month period following the filing, the facts and circumstances, as I know them, and as will be spelled out below, demonstrate, in my judgement, that the prosecutor was not, in fact, ready for trial within the maximum six-month period prescribed by the Rules of this Court. There are two separate but related grounds for this assertion, as follows:

A. the prosecutor has failed for over eight months to respond to Mayer's motion for a bill of particulars which was brought on by counsel's letter to the Court on August 29, 1975, as will be particularized below, thus, effectively preventing the Court from deciding the motion, which failure has continued until the present time; and

B. the prosecutor has failed to give defendant Mayer the complete documentary discovery to which he was entitled under Rule 16 of the Federal Rules of Criminal Procedure and which he promised to give in early May, 1975, over one year ago.

A. As to Defendant's Motion for a Bill of Particulars

5. On June 27, 1975, there was served on behalf of the defendant Mayer a notice of motion seeking a bill of particulars and other relief which will hereafter be discussed. At the time the motion was filed, the face of the motion contained no specific return date or time inasmuch as the prosecutor had previously stated that he would provide, without the necessity of a motion, all of the particulars to which Mayer was entitled. I had explained this offer by the prosecutor in a letter to the Court dated May 13, 1975, a copy of which is annexed hereto and marked Exhibit B. (For the sake of completeness, I also annex hereto a copy of my letter of May 5, 1975 to the prosecutor, Exhibit C, confirming the foregoing arrangement since my May 5 letter is referred to in my letter of May 13.) I also annex, Exhibit D, my letter to the Court dated June 30, 1975 submitting the motion for particulars as mentioned above.

When I returned from my summer vacation in early August, I tried to get in touch with Mr. MacDonald, the then prosecutor, to discuss the status of my request for a bill of particulars, and other related matters, but had difficulty reaching him on the telephone and, accordingly, wrote to him on August 21, 1975. A copy of my letter of that date is marked Exhibit E. A few days after

my letter of August 21, 1975, Mr. MacDonald and I met in his office and discussed my pending request for a bill of particulars. Mr. MacDonald challenged almost every item in the request and, consequently, I decided that it was necessary to litigate the above-mentioned motion for a bill. I so indicated to Mr. MacDonald in my letter to him of August 29, 1975, a copy of which is annexed hereto and marked Exhibit F. On August 29, 1975, the same day on which I wrote to Mr. MacDonald, I wrote to the Court (Exhibit G) and asked that the motion be calendared for September 19, 1975 at 2:00 p.m. (Although the letter does not so indicate on its face, a copy of it was, in fact, sent to Mr. MacDonald and was received by his office as is indicated in the Bannigan affidavit, to which further reference will be made below.) According to my file, I then spoke with Mr. George Johnson, the Deputy Clerk to Judge Tenney (to whom this case has been assigned) and he advised that the motion was scheduled to be submitted to the Court on Friday, September 19, 1975, as requested in my letter.

On September 19, 1975, I submitted a memorandum of law to the Court in support of defendant's motion for a bill of particulars and caused a copy of same to be served on the United States Attorney's Office, and a copy was so served as indicated on the reverse side of the cover of the memorandum, a copy of which is annexed hereto as Exhibit H. (I am not annexing the body of the memorandum in order not to encumber these papers unnecessarily.)

At no time either prior to or subsequent to September 19, 1975, and right up until the present day, i.e., May 25, 1976, have I ever received either any opposition papers from the United States Attorney's Office in opposition to the aforesaid motion or a bill of particulars.

Moreover, the Court has indicated in the course of its inquiry into the readiness of the prosecutor for trial in October, 1975 held on May 14, 1976, that in January and/or February, 1976, the Court's clerk was instructed to and did telephone the then Assistant United States Attorney in charge of the case to remind him that no opposition papers had been received in opposition to Mr. Mayer's motion and that the Court expected to receive such papers.

B. As to Discovery

6. At the outset of the case, in telephone conversations that I had with Mr. MacDonald in early May, 1975, he assured me that the prosecution would supply to me, as defense counsel for Mr. Mayer, all of the material to which Mr. Mayer was entitled by way of discovery, without the necessity of a formal motion. This was repeated in a subsequent conversation, and I confirmed the foregoing understanding by my abovementioned letter to Mr. MacDonald dated May 5, 1975, copy of which is annexed hereto and marked Exhibit C.

Subsequently, I referred to this understanding in my abovementioned letter to the Court dated May 13, 1975 (Exhibit B) in which I stated the following:

> Mr. MacDonald has indicated informally that all pretrial discovery items and bill of particulars will be supplied voluntarily without the necessity of any motion, and I have confirmed this arrangement to him in writing by my letter of May 5, 1975 containing a schedule of requested items. I am enclosing a copy of this letter for Your Honor's convenience.

Subsequently, I received a letter from Mr. MacDonald dated May 30, 1975 forwarding Mr. Mayer's grand jury and SEC testimony with certain grand jury exhibits and various interview notes. The letter also indicated, in addition:

> Rule 16(b) materials are now available at my office for your inspection during reasonable business hours.

A copy of the said letter is annexed hereto and marked Exhibit I.

In my abovementioned meeting with Mr. MacDonald on August 27, 1975, we reviewed the status of the discovery. I had at that time received the following categories of discovery materials from the prosecutor:

1. Mayer's grand jury and SEC testimony,
2. certain exhibits in the grand jury testimony, and
3. interview notes based on interviews with Mayer by the prosecutor and SEC staff.

At our meeting on August 27, Mr. MacDonald stated to me that the only other discovery items to which I was entitled were the fifth, post-effective, amended notification of Minute Approved Credit Plan, and a statement of Mr. Joseph Lichtman, both of which he stated he would provide to me. Mr. MacDonald then stated that this comprised all of the discovery material which the prosecutor had in its files and to which I was entitled as counsel for Leon Mayer.

Accordingly, I concluded that there was no further discovery to be had from the prosecutor and (subject to the two outstanding items) so indicated in both my letter to the Court and Mr. MacDonald, abovementioned, of August 29, 1975 (Exhibits F & G).

In fact, I have only recently learned, since May 1, 1976, that there was a substantial amount of discovery material to which defendant Mayer was and is entitled. I was wholly unaware of the existence of such material at the time of my August, 1975 communications with Mr. MacDonald. I learned about the additional discovery materials from the then Assistant United States Attorney in charge of the case, (the third such Assistant), Mr. Timbers, at a meeting in his office on March 8, 1976. At that meeting, Mr. John Gussow, my associate, also attended. Subsequently, Mr. Gussow pursued the matter in several communications with Mr. Timbers. As a result, Mr. Gussow has recently obtained inspection of a substantial number of documents. These included a collated list of all of the purchasers of MACP stock which Mr. Gussow inspected on or about May 6, 1976, a copy of which is annexed hereto as Exhibit J. This is relevant to Mayer's defense in that he claims that he, as a registered representative, engaged in bona fide sales of the stock of MACP to the public and the names may constitute or lead to evidence supporting this assertion.

Mr. Gussow further inspected and requested photocopies of a substantial number of documents on or about May 11, 1976, a list of which documents is attached to this affidavit as Exhibit K. It will be noted that among the documents so inspected was the fifth, post-effective amended notification which Mr. MacDonald

promised to provide in August, 1975. To date, I still have not received the other specific item referred to by Mr. MacDonald, i.e., the Lichtman statement.

Photocopies of the substantial discovery documents referred to above in the list marked Exhibit K were actually picked up by me personally at the office of the United States Attorney on May 14, 1976, the same day that the Court conducted the hearing on the government's alleged readiness for trial in October, 1975.

Moreover, Mr. Gussow was told by Mr. Timbers on or about May 11, 1976 that there are additional documents to which Mayer is entitled by way of discovery and that those documents will be forthcoming in the future, when prepared by the prosecutor's office.

7. Summarizing, it is clear from the foregoing recital of facts that even if the prosecutor was, in fact, ready for trial with his case on October 9, 1975, he had, by his own conduct prior thereto, and for months thereafter, withheld from defendant Mayer the particulars and discovery to which Mayer was entitled and which the prosecutor had originally promised. He, thus, prevented defendant Mayer from being ready to go to trial with his defense, a condition that continues to exist up to this very day, some 13 months after the filing of the indictment. Under those circumstances, the statement of the prosecutor's readiness for trial on October 9, 1975 was sham. Moreover, failure of the prosecutor to provide what the defendant was entitled to was in flagrant violation of the basic spirit and purpose of the Readiness Rules. The case should be dismissed on these grounds.

WHEREFORE, it is respectfully requested that defendant Mayer's motion be granted and that the indictment be dismissed on grounds above set forth.

Melvin D. Kraft

Melvin D. Kraft

Sworn to before me this

25th day of May, 1976

Edgar A. Smith

EDGAR A. SMITH
Notary Public, State of New York
No. 31-4618916
Qualified in New York County
Commission Expires March 30, 1977

A Yes.

Q You have a right to refuse to answer any question that might tend to incriminate you.

Do you understand that right?

A I understand.

Q In addition, you should understand that the principal consequences of waiving that right and answering questions includes your answers being used against you in some later proceedings.

A I understand that.

Q You have a right to consult with an attorney outside of this room prior to answering any question and retain an attorney or we can appoint one if you cannot afford one.

Do you understand that?

A Yes, I understand that.

Q On March 3rd you came with an attorney to my office and there discussed some of these facts of Minute Approved Credit Plan.

Did you not?

A That is correct?

Q His name was Irving Eiferman?

A That is correct.

Q Mr. Eiferman knows you are here today and you

RALPH FINK & ASSOCIATES
140 NASSAU STREET, NEW YORK, N.Y. 10038, (212) 608-5566

talked with him with respect to your appearance here?

A I believe he knows, but I did not speak to him with respect to my appearance here.

My brother called up.

I assume he made the appointment and my brother just got the time from him when to come down.

Q I would like to -- first of all, will you tell the Grand Jury what your current occupation is and previous occupations in reverse chronological order?

A Currently I am a commodity trader.

I trade mostly for myself.

I buy and sell.

Q For how long?

A About a year and a half.

Q And prior to that?

A I was a registered rep at A.C. Kluger and Company and prior to that I was a Vice-President at Kern Securities.

Prior to that I was with Hertz, Warner & Company.

Prior to that I was Vice-President of the Rubin, Rose & Company.

Priot to that I was a registered rep with Shearson Hammil & Company.

That is my whole business history.

There was never $20,000 involved. This $20,000 has been floating around with all different type of stories. There is a note for --there is a letter thereon $20,000, which was written up by Mr. Stein. In here, the $20,000 was down two different ways. First, it was supposed to be payment for the Computer Microdata. Then there was supposed to be -- supposed to be a loan from me. I supposedly -- supposed to take that money and grab the money, run out of the car and run into the bank.

Now, Mr. Watts had a gun with him. And I'm not going to read it for you, but there's a statement by the Patrolman. He investigated Mr. Watts. He asked Mr. Lichtman and Mr. Watts whether there was something wrong. These people were sitting in the car waiting for me, and they told him there's nothing wrong. If I would have grabbed my money and run away with my money -- I know I would run after somebody, especially if I have a security guard with me and I have a gun with me. There was never any money involved. And there is this $20,000 has been floating in and out all different ways. I don't know.

I know that I got a raw deal at SEC, and I told Mr. MacDonald. I'm upset about it. It's too late. I didn't have the right advice. I don't know in what respect I'm being called over here. I don't know whether I'm being called here

as a defendant. I don't know whether I'm being called here as being guilty of something. I don't know whether I'm being called here as a witness. Mr. MacDonald didn't tell me and, therefore, I don't know.

But I just don't -- the reason I made my little speech -- and I think this is about the biggest speech that I have ever made in my life -- and the reason I've done this is I wanted you people to know because I understand whatever happens, you have to vote, you have to vote on it, and to be perfectly honest, if I would be sitting over here, and there's fifteen, twenty people coming in, I would probably listen to what Mr. MacDonald says.

I'm not saying that he's saying anything against me. I would probably never remember the names myself. I just want to reiterate one thing, that everything I have stated is the truth and nothing but the truth. I have not said one thing to the best of my recollection that is not true. Thank you very much.

Q Thank you.

(Witness excused.)

(Time noted - 3:00 P.M.)

talked with him with respect to your appearance here?

A I believe he knows, but I did not speak to him with respect to my appearance here.

My brother called up.

I assume he made the appointment and my brother just got the time from him when to come down.

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Prior to that I was with Hertz, Warner & Company.

Prior to that I was Vice-President of the Rubin, Rose & Company.

Priot to that I was a registered rep with Shearson Hammil & Company.

That is my whole business history.

RALPH FINK & ASSOCIATES
140 NASSAU STREET, NEW YORK, N. Y. 10038. BEekman 3-5546

sale of Minute Approved Credit Plan. These checks were supposedly put into the A. C. Kluger regular account instead of putting it in the segregated account. I had nothing to do with signing checks. I had nothing to do with depositing checks.

Yet, for all these reasons, I was suspended by the SEC. And basically, what happened, I begged the SEC to meet with them and speak to them. And when I came down and I spoke to them one time, they practically made fun out of me, they laughed at me; you want a deal? That's what we want.

I did not want to make a deal with SEC. I was forced -- my attorney -- this was the second attorney, a fellow by the name of Bert Gusrae, who took over this case only because he was a friend of mine and I didn't pay him for it. But Ed Meyer had dropped me at the time already because I had paid him about $10,000 in legal fees, and he asked me for another couple of thousand dollars and I couldn't pay him anymore. This is one of the things that happened with SEC.

I would like to continue a little bit. I want you to know another thing. I came over here -- I was not subpoenaed to come to the Grand Jury, or the first time, I was not subpoenaed to come to the Grand Jury today. I came here on my own accord.

My brother called me and said he was looking for me. I have no attorney for this. I did not come with an attorney

A I do not understand that question.

Q On March 3rd, do you remember my asking you if you would consent to full disclosure of Mr. Meyer's files?

A Yes, that is correct.

Q What steps did you take thereafter?

A I spoke to Mr. Rich.

You know I wanted to give you right away whatever you wanted.

I had an attorney with me at the time.

He said he wanted to see it first.

Mr. Rich sent me two copies of whatever Mr. Meyer had and I give it to my attorney.

I understand you should have one of them.

Do you?

Q December 20th notes of a meeting on that day?

A That is correct.

Q Did you have any discussion about all the previous communications you had with Mr. Meyer and Mr. Rich prior to December 27th?

A No, I did not.

Q Would you be willing to instruct them to make full disclosure of your --

A As far as I am concerned yes.

I just hope I don't get into trouble with my

EXHIBIT A-5

attorney.

As far as I am concerned I waive all.

You can have everything you want.

Q After I adjourn, communicate with Ed Meyer and instruct him to make full disclosure.

A The only question I have to you and that is should I call my attorney first?

Should I do it before?

Whatever you tell me to do I will do it.

Q You decide to exercise your right to a lawyer, about waiving your right.

A Fine, I will call him up.

I will tell Mr. Meyer to give you everything you want.

Q With respect to the letter of purchase or there is a Mr. Weinrib with 3,000 shares indicated by his name.

Do you recall being asked by Mr. Glass, being asked about that customer and his purchase and making some response at closing?

A Yes.

Q It might be his wife's name?

A I think Mr. Glass asked me who took 3,000 shares.

I told him it was recommended by Lichtman.

I think it was one of the customers that Joe

Q And that that is how you first met Joseph Lichtman?

A No, that's not what I told him. I told him -- that's not what I told him. If that's -- if you have that information, that information is wrong.

Manny Quint happens to be a friend of mine, but Manny Quint is the attorney for Minute Approved Credit Plan. And when I went with Minute Approved Credit Plan, I didn't even know that Manny Quint was the attorney for that.

If you took that out, Mr. MacDonald, if you took this out from the notes that I authorized Mr. Meyer to give you, if you would call him as a witness, I'm sure that he wouldn't make that statement. He might have made mistakes by taking notes, putting in a different name for a different name.

Q You say you wanted to make a statement.

A Yes. I would like to make a statement to the ladies and gentlemen of the Grand Jury. ~~I'd like to explain myself.~~ I don't know whether I am doing it right. I don't know if this is the procedure, but I'm very baffled by certain things that have happened to me since this Minute Approved Credit Plan was introduced by me to A. C. Kluger.

I don't know whether you people know because of this, and I have -- I have over here from the United States -- from the Securities and Exchange Commission. I was suspended from

RALPH FINK & ASSOCIATES
140 NASSAU STREET, NEW YORK, N. Y. 10038, BEekman 3-2515

MELVIN D. KRAFT, P.C.
LAW OFFICES
BAR BUILDING
36 WEST 44TH STREET
NEW YORK, N. Y. 10036

WILLIAM G. BECKER, JR.
OF COUNSEL

AREA CODE 212
575 7800
575-1017

May 13, 1975

Hon. Charles H. Tenney
United States District Judge
Southern District of New York
United States Courthouse - Room 1904
Foley Square
New York, New York 10007

United States of America v.
Ezrine, et al. - 75 Cr. 363

Dear Judge Tenney:

I represent defendant, Leon Mayer, in the above-entitled action, as to which I believe your docket reflects a May 14 deadline for all motions by defendant.

Mr. MacDonald has indicated informally that all pretrial discovery items and bill of particulars will be supplied by him voluntarily without the necessity of any motion, and I have confirmed this arrangement to him in writing by my letter of May 5, 1975, containing a schedule of requested items. I am enclosing a copy of this letter for Your Honor's convenience.

In view of my understanding with Mr. MacDonald I am respectfully requesting by this letter that Your Honor extend the deadline for motions until May 30, 1975, so that in the event any motions are necessary, I will have adequate time to prepare the motion papers and memorandum of law.

The last time I talked with Mr. MacDonald, about a week or so ago, he was then intending to complete a trial and then take a short vacation; hence, the reason

EXHIBIT B

for the request for additional time.

Respectfully yours,

Melvin D. Kraft

MDK:ce

cc: W. Cullen MacDonald, Esq.

May 5, 1975

W. Cullen MacDonald, Esq.
Assistant United States Attorney
United States Attorney's Office
Room 725
One St. Andrew's Plaza
New York, New York 10007

United States of America v. Ezrine,
et al. - 75 Cr. 363

Dear Mr. MacDonald:

Confirming our previous telephone conversation and the one we had this morning, you have indicated that the prosecution will supply to me, as defense counsel for Mr. Mayer, all the material to which Mr. Mayer is entitled without the necessity of formal motions.

As I indicated on the telephone, I have preliminarily reviewed the indictment and, based upon such review, there are certain items of particulars and information which I think would be helpful for me to set down on paper at this time.

The attached listing is not necessarily exhaustive as I hope to investigate the facts of the case more fully in the near future, and also to study the indictment and the relevant statutes involved in conjunction with such factual investigation.

In any event, I have prepared a preliminary schedule of items which I am enclosing with this letter.

As I understand it, you are expecting to take a short vacation in the near future, and that you will be in touch with me upon your return sometime in the

EXHIBIT C

latter part of next week.

With reference to the present May 14 deadline for motions, you have indicated that you will not object on grounds of timeliness to any motions that I might be advised to make after that date, in the event we are unable to resolve matters informally. Needless to say, I hope we can resolve all the matters involved informally so that no motions are necessary.

Thank you kindly for your courtesies and cooperation.

Very truly yours,

Melvin D. Kraft

MDK:ce
Enclosure

SCHEDULE OF ITEMS
ATTACHED TO LETTER OF M. D. KRAFT
TO W. C. MACDONALD, DATED MAY 5, 1975

(U.S.A. v. Ezrine, et al. - 75 Cr. 363)

A. Bill of Particulars (Fed. R. Crim. P. 7(f))

(1) The names of all co-conspirators not named in the indictment who are presently known to the Government and their addresses at the time of their alleged participation in the alleged conspiracy.

(2) Any overt acts not enumerated in the indictment, concerning which acts the Government intends to offer evidence upon the trial of the indictment herein.

(3) The manner in which defendant Mayer is alleged to have falsified purchases of Minute Approved Credit Plan, Inc. ("MACP") stock, and the dates on which such falsification is alleged to have occurred (Count I, Par. III(e)).

(4) The address of the place where the alleged meeting among defendants Mayer and Murray Lichtman and Sidney Stein on December 14, 1971 is alleged to have occurred (Count I, Par. IV (1)).

(5) The name of the person who allegedly gave $20,000 to defendant Mayer as alleged in the indictment, and the date, time, and place of this alleged payment (Count I, Par. IV (2)).

(6) The statements or omissions in the MACP offering circulars which are alleged to be false and fraudulent (Count I, Par. 4(3), Par. 10).

(7) The matters constituting the "fraudulent character of such sales", which defendant Mayer is alleged to have failed to disclose (Count I, Par. 4(4)).

(8) Any material facts allegedly falsified, concealed or covered up, the substance of any false, fictitious or fraudulent statements or representations

allegedly made, and any false writings and documents allegedly made and used which are not described in Paragraphs 3 and 4 of Count One, and concerning which the Government intends to offer evidence upon the trial.

(9) The substance of any untrue statements of material facts and omissions to state material facts allegedly made by which defendants allegedly obtained money and property, which are not described in Paragraphs 3 and 4 of Count One, and concerning which the Government intends to offer evidence upon the trial.

(10) The nature of the participation of defendant Mayer in the mail and telephone communications alleged in Counts Three through Eleven, inclusive, of the indictment.

(11) The names and addresses of any witnesses who testified before the grand jury whom the Government does not intend to call as witnesses upon the trial of this indictment.

(12) A copy of each and every matter named in Counts Two through Seventeen, inclusive, of the indictment, including any and all envelopes in which it is claimed such matter was mailed or received (U.S. v. Pilnick, 267 F. Supp. 791, S.D.N.Y. 1967).

B. Request for Discovery and Inspection (Fed. R. Crim. P. 16)

Please produce for inspection and copying the following matter:

(1) All written or recorded statements made by defendant Mayer to the United States Attorney's Office or to the Securities and Exchange Commission, within the possession, custody, or control of the Government.

(2) Recorded testimony of defendant Mayer before the grand jury; and that of the other witnesses who will testify for the Government at the trial.

(3) The MACP offering circulars filed on or about February 10, 1972 and June 12, 1972.

(4) The Fifth Post-effective Amended Notification under Regulation A, Form 1-A, filed on or about July 19, 1972, described in Count Eighteen of the indictment.

C. Request for Exculpatory Material (Brady v. Maryland)

Please produce all material in the files of the United States Attorney's Office, or any other Government agency, which constitutes evidence or refers to or may lead to the discovery of evidence which tends to exculpate defendant of the charges set forth in the indictment.

MDK:ce

June 30, 1975

Hon. Charles H. Tenney
District Judge
United States District Court
Southern District of New York
United States Courthouse
Room 1904
Foley Square
New York, New York 10007

Re: United States of America v.
Ezrine, et al. - 75 CR 363

Dear Judge Tenney:

In connection with the motion papers dated June 27, 1975 and served on behalf of my client, defendant Leon Mayer, I have taken the liberty of making the motions returnable at an unspecified date, time and place in order to avoid the possibility of undue expenditure of judicial time and effort.

As explained in the motion papers the prosecutor (Mr. MacDonald) and I have agreed to attempt to resolve the issues raised by the motion in the early part of August when I return from my vacation. If we do so, the motions will be withdrawn. If we are unable to do so I would then like to indicate to Your Honor that the motion will have to be determined and Your Honor can then fix a return date.

I hope the foregoing procedure is acceptable to Your Honor.

Respectfully yours,

Melvin D. Kraft

MDK:bg

EXHIBIT D

U.S. v. Mayer
0074

August 21, 1975

W. Cullen MacDonald, Esq.
Assistant United States Attorney
Southern District of New York
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007

Leon Mayer
75 Cr. 363

Dear Mr. MacDonald:

I have tried to reach you on the ~~telephone~~ several times in recent days but keep getting a busy signal; hence, I would appreciate it if you would return my call upon receipt of this letter.

I would very much like to move forward with the discovery which we began on June 26, 1975.

Also, I would like to resolve, if possible, the matters which are the subject of my motion papers dated June 27, 1975.

Thank you for your prompt attention.

Sincerely yours,

Melvin D. Kraft

MDK:ET

EXHIBIT E

August 29, 1975

W. Cullen MacDonald, Esq.
Assistant United States Attorney
United States Department of Justice
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: Leon Mayer, 75 Cr. 363

Dear Mr. MacDonald:

I am appreciative of your effort Wednesday in dictating your notes of your meeting with Leon Mayer.

I am enclosing a typewritten copy of the notes, as you requested.

With respect to my motion for a bill of particulars and discovery, I have concluded, upon reflection, that I should notice the motion so far as the bill of particulars is concerned. Hence, I am writing to Judge Tenney today per my enclosed letter.

As indicated in my letter to Judge Tenney, I would appreciate receiving from you, at your earliest opportunity, the fifth post-effective amended notification (Item 4-B of my letter), and also the statement of Mr. Lichtman which you mentioned.

I am appreciative of your efforts to cooperate with me in the conduct of the discovery.

Sincerely yours,

Melvin D. Kraft

MDK/wmb
Enclosures

EXHIBIT F

MELVIN D. KRAFT, P.C.
LAW OFFICES
BAR BUILDING
36 WEST 44TH STREET
NEW YORK, N.Y. 10036

WILLIAM G. BECKER, JR.
OF COUNSEL

AREA CODE 212
575 7600
575-K[illegible]7

August 29, 1975

Hon. Charles H. Tenney
District Judge
United States District Court
Southern District of New York
United States Courthouse
Room 1904
Foley Square
New York, New York 10007

Re: United States of America v.
Ezrine, et al. - 75 CR 363

Dear Judge Tenney:

I respectfully refer to my letter to your Honor dated June 30, 1975 and my Notice of Motion dated June 27, 1975 referred to therein.

As mentioned in my letter, Mr. MacDonald and I have conferred extensively and have resolved the issues in that portion of the motion relating to discovery, subject to a few outstanding items which Mr. MacDonald has stated that he will provide to me.

Mr. MacDonald has further stated that the prosecution has no items to produce, pursuant to item 3 of the motion.

Hence, the only portion of the motion which was not resolved is item No. 1 - for a bill of particulars, and as to that branch of the motion, I respectfully request that your Honor place it on your Motion Calendar for Friday, September 19, 1975 at 2:00 P.M. in Room 1904.

Respectfully yours,

Melvin D. Kraft

MELVIN D. KRAFT

MDK/wmb

EXHIBIT G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- *

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

IVAN ALAN EZRINE, JOSEPH LICHTMAN, :
MURRAY LICHTMAN, LEON MAYER,
EDWARD VASSALLO, LAWRENCE GORAL, :
AND ANTHONY L. GRECO, JR.,

Defendants :

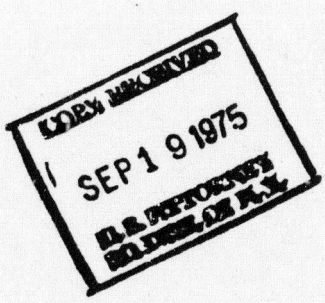
- *

MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION FOR A BILL OF PARTICULARS

MELVIN D. KRAFT, P.C.
ATTORNEY FOR DEFENDANT LEON MAYER
BAR BUILDING
36 WEST 44TH STREET
NEW YORK, N Y 10036
575-7800

EXHIBIT H

PAUL J. CURRAN



SUBMITTED
TO
J TOMNEY'S
CHAMBERS
3:10 9/19/75
E.A.S.

United States Department of Justice

ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER

WCMACD:dlf

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE Annex
One St. Andrew's Plaza
NEW YORK, N. Y. 10007

May 30, 1975

Melvin D. Kraft P.C.
Bar Building
36 West 44th Street
New York, NY 10036

Re: Leon Mayer
75 Cr. 363

Dear Mr. Kraft:

Pursuant to Rule 16, enclosed please find your client's Grand Jury testimony dated March 19, 1975, his S.E.C. testimony on August 30, 1972 and September 21, 1972 and various interview notes.

In addition, Rule 16(b) materials are now available at my office for your inspection during reasonable business hours.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: W. Cullen MacDonald
W. CULLEN MACDONALD
Assistant United States Attorney
(212)791-0005

Enclosures

EXHIBIT I

M E M O R A N D U M

TO: FILE

FROM: JAG

DATE: 5/6/76

SUBJECT: UNITED STATES v. MAYER, et al

COLLATED LIST OF PURCHASERS OF MACP STOCK

Name of Purchaser	Allocation (Shares)	Amount Paid
David Adler	200	$ 1,000
Lujza Bernstein	200	1,000
Paul Bernstein	100	500
Bessie Curnsby	500	2,500
Judah Finerman	1,000	5,000
Szulen Freund	100	500
Maurice Fried	500	2,500
Mates Friesel	500	2,500
Frieda Franklin	2,000	10,000
David Ginsberg	2,000	10,000
Morris Kaufman	2,000	10,000
Susan (illegible)	100	500
Muriel (illegible)	2,000	10,000
Alan (illegible)	250	1,250
Ben Millan	1,000	5,000
Ehsan Maissani	360	1,800
Harold Ochstein	100	500

EXHIBIT J

Name of Purchaser	Allocation (Shares)	Amount Paid
Jeff Rodell	400	$ 2,000
William Prinsell	100	500
Leon Rafalowicz	1,000	5,000
Morris Rand	100	500
Robert Reed	200	1,000
Sol Reisman	200	1,000
Max Rosenberg	300	1,500
Irving Rothaus	5,000	25,000
Frieda Saper	200	1,000
E & J Scheffer	200	1,000
Jack Shaw	400	2,000
Zalman Siegel	100	500
Victor Stein	200	1,000
Karl Szychter	100	500
Belle Weiner	400	2,000
Rabbi Hellel Wiener	500	2,500
Sam Bergman	200	1,000
B. Fedder	100	500
Joseph Gross	200	1,000
B. Handler	300	1,500
Jack Izbonitz	1,000	5,000
Esther Goldman	1,000	5,000
Mel Klar	500	2,500
Seymour Kurzner	590	2,950
David Lytan	600 (500)	2,500
Louis Markus	500	2,500
Teddy Obermeister	500	2,500

Name of Purchaser	Allocation (Shares)	Amount Paid
Jack Roth	500	$ 2,500
Leon Sacks	500	2,500
Abraham Stockowsky	500	2,500
Samuel (illegible)	500	2,500
Cyrus Abbe	1,000	5,000
John Achenbach	1,000	5,000
Dr. G. Adler	1,000	5,000
Robert Bennet	1,000	5,000
Margaret Berkly	1,000	5,000
Arnold Block	1,000	5,000
Dorothy Crokett	1,000	5,000
Alfred Davis	1,000	5,000
Fannie Eadelman	1,000	5,000
Arnold Engel	1,000	5,000
Stephen Fields	1,000	5,000
Katherine Ford	1,000	5,000
Dr. V. Gonzalez	1,000	5,000
David Goodkin	1,000	5,000
Isidore Hunes	1,000	5,000
Dr. L. Heller	1,000	5,000
Charles Hoffman	1,000	5,000
John James	1,000	5,000
Len Kaminsky	1,000	5,000
John Pearson	1,000	5,000
Alan Schwiabacher	1,000	5,000
Barbara Bartsh	1,500	7,500
Carol Bartsch	2,000	10,000
Dores Bartsch	1,000	5,000

Name of Purchaser	Allocation (Shares)	Amount Paid
Richard Bartsch	1,500	$ 7,500
Ira Lerman	2,000	10,000
Susan Lerman	1,000	5,000
Equitable Small Business	2,000	10,000
D. Agriss	1,000	5,000
P. Batiato	1,500	7,500
H. Bressach	2,000	10,000
E. Cascella	1,500	7,500
F. De John	1,000	5,000
J. Fasace	1,000	5,000
A. Jasper	1,000	5,000
P. Kaftol	1,000	5,000
Anne Prestia	1,000	5,000
R. Reich	1,000	5,000
E. Sarino	1,000	5,000
Jack Shaw	500	2,500
Jeanne Weinreb	3,000	15,000
Sam Elieson	2,000	10,000

MEMORANDUM

TO: FILE

FROM: JAG

DATE: 5/11/76

SUBJECT: UNITED STATES v. MAYER

DOCUMENTS DISCLOSED BY GOVERNMENT --
TO BE PHOTOCOPIED (5/11/76)

1. Registration statement, MACP, 10/21/70.
2. Withdrawal of registration, 6/25/71.
3. Notification under Regulation 1-A, 6/25/71.
4. Amendment of Certificate of Incorporation of MACP, 6/16/71.
5. Amended notification under Regulation A, Form 1-A, 10/1/71.
6. Agreement between MACP and Redstone Securities, dated 6/21/71.
7. Third amended notification under Regulation A, Form 1-A.
8. Second post-effective amended notification under Regulation A, Form 1-A, 1/31/72.
9. Contract of 1/26/72, between A.C. Kluger and MACP.
10. Third post-effective amended notification under Regulation A, Form 1-A.
11. Fifth post-effective amended notification under Regulation-A, Form 1-A.
12. Prospectus issued by Benjamin Werner Co. of MACP, 1/13/69.
13. Amended Certificate of Incorporation of MACP.
14. Contract between MACP and Merchants Associated Credit Plan, dated 12/3/63.
15. Letter of 8/16/69 from Emanuel Quint to MACP [consent to registration].
16. Notification under Regulation 1-A.

EXHIBIT K

17. Contract between Redstone Securities and MACP, dated 6/21/71.

18. Consent of Emanuel Quint and MACP, dated 6/23/71.

19. Consent of Hill, Wynn, and Atlas, Esqs. dated 6/22/71.

20. Amended notification under Regulation Form 1-A, 10/1/71.

21. Second amended notification under Regulation A, dated 10/17/71.

22. Third amended notification dated 12/2/71.

23. Fourth post-effective amended notification under Regulation A, Form 1-A.

24. Fifth post-effective amended notification under Regulation A, Form 1-A of MACP.

25. Letter to Securities and Exchange Commission from Alan C. Kluger [post-closing] 7/72.

26. Miscellaneous correspondence to customers of MACP issues.

27. Phone charges on telephone number 631-0296 to Mrs. Hellerman, Vassalo, and Greco, approximately around the period 7/10/72.

28. Grand Jury Exhibit No. 1, consisting of various checks.

29. Stock transfer sheets, covering entire MACP issue.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-against- : 75 Cr. 363 (CHT)

IVAN ALAN EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, LEON MAYER, EDWARD VASSALLO, LAWRENCE GORAL, and ANTHONY L. GRECO, JR., :

Defendants. :

44930

FILED
U.S. DISTRICT COURT
S.D. N.Y.
Aug 5 4 11 PM '76

MEMORANDUM

TENNEY, J.

Presently before the Court are numerous defense motions in this securities fraud case. Included among this group of motions are: (1) motions by defendants Mayer, Goral, J. Lichtman, and Greco for dismissal of the indictment herein on the ground that the Government was not ready for trial within six months from the date of the filing of the indictment as required by Rule 5 of the Southern District Plan For Achieving Prompt Disposition of Criminal Cases ("the Plan") (in addition it appears that counsel for defendant J. Lichtman are interposing this motion on behalf of M. Lichtman as well); (2) defendant Mayer's motion to dismiss the indictment based upon the failure of the prosecutor to inform him prior to his appearance before a grand jury that he was a "target" of the investigation; (3) defendant J. Lichtman's motion to dismiss the indictment for pre-indictment delay; (4) defendant Goral's motion for the inspection of grand

35

jury minutes; (5) motions of all defendants for the production of Brady material; and (6) various discovery motions of all defendants including requests for bills of particulars and production of documents, and the consequent motions of defendants Goral and Greco to preclude the Government from submitting into evidence at the trial of this action any of those items demanded in either defendant's bill of particulars. The Court will consider these motions seriatim.

Rule 5 Motions

Rule 5 of the Plan provides in pertinent part as follows:

> "In all cases the government must be ready for trial within six months from the date of the arrest, service of summons, detention, or the filing of a complaint or of a formal charge upon which the defendant is to be tried ... whichever is earliest. If the government is not ready for trial within such time, and if the defendant is charged only with non-capital offenses, the defendant may move in writing, on at least ten days' notice to the government, for dismissal of the indictment.... [T]he court shall enter an order dismissing the indictment with prejudice unless the court finds that the government's neglect is excusable...."

The focus of Rule 5 is the public's interest in the prompt disposition of criminal cases. United States v. Furey, 514 F.2d 1098, 1101 (2d Cir. 1975); United States v. Bowman, 493 F.2d 594, 597 (2d Cir. 1974); United States v. Rollins, 487 F.2d 409, 413 (2d Cir. 1973); Hilbert v. Dooling, 476 F.2d

355, 357 (2d Cir.) (en banc), cert. denied, 414 U.S. 878 (1973). This goal is sought to be implemented by concentrating on the avoidance of prosecutorial delay. United States v. Furey, supra, 514 F.2d at 1101; United States v. Bowman, supra, 493 F.2d at 597. The Rule does not mandate a trial by a certain date, but rather that the Government be ready to proceed to trial by that date. United States v. Furey, supra, 514 F.2d at 1101; Hilbert v. Dooling, supra, 476 F.2d at 357. A violation of the Rule calls for a dismissal of the indictment with prejudice. United States v. Furey, supra, 514 F.2d at 1101; Hilbert. v. Dooling, supra, 476 F.2d at 356. The Rule imposes no requirement that a defendant demonstrate prejudice accruing by the failure of the Government to be prepared to proceed nor must a defendant make a demand for a speedy trial. United States v. Gonzales, 387 F. Supp. 471, 475 (E.D.N.Y. 1975); United States v. Altro, 358 F. Supp. 1034, 1039 (E.D.N.Y. 1973). Since the focus is on prosecutorial delay, any delay attributable to the Court's ruling on motions or to congestion in the Court's calendar would not be held against the Government. United States v. Counts, 471 F.2d 422, 427 (2d Cir.), cert. denied, 411 U.S. 935 (1973). With regard to Rule 16 discovery matters, it has been held that where the Government merely makes the material available, it has complied with the spirit of the rules and the burden then shifts to the defendant to avail himself of the opportunity to view the material. United

States v. Pollak, 364 F. Supp. 1047, 1049-50 (S.D.N.Y. 1973), aff'd, 492 F.2d 1237 (2d Cir. 1974). Similarly, failure to provide a bill of particulars will not provide a basis for a dismissal. Id. at 1050. In both of these instances there are adequate remedies available to a defendant to enforce a demand. Id.

The filing of the indictment in this case, on April 11, 1975, was the event which commenced the running of the six month period under the Rule as to all defendants. The Government's Notice of Readiness was filed on October 10, 1975, just one day prior to the expiration of the allowable period. Prior to October 10, 1975, several motions had been interposed by various defendants, including: (1) defendant J. Lichtman's motion for a bill of particulars and for dismissal of the indictment for pre-indictment delay; (2) defendant Greco's motion for a bill of particulars and for production of documents; and (3) defendant Mayer's motion for a bill of particulars, for production of documents, and for Brady material. On October 10, 1975, contemporaneous with the filing of the Notice of Readiness, the Government filed a bill of particulars and a memorandum in opposition to the portions of the demand for a bill of particulars to which the Government objected. While addressed only to the demands of defendants Greco and J. Lichtman, both of these documents were served on each of the five defendants. Prior to this time, on May 30, 1975, the Government had

written to counsel for each of these three defendants enclosing some materials pursuant to Rule 16 of the Federal Rules of Criminal Procedure and further notifying these defendants that various other materials pursuant to Rule 16 were then available for inspection and copying at the office of the Assistant United States Attorney then in charge of the case. These letters were supplemented by a letter dated June 13, 1975, from the Assistant United States Attorney to counsel for defendant Mayer enclosing further Rule 16 material. Additional supplementation under Rule 16 was forwarded by the Assistant United States Attorney to counsel for defendant J. Lichtman on June 16, 1975. The original mailing, on May 30, included Rule 16 material relating to defendant Goral despite the fact that no motion had been filed on behalf of this defendant. Finally, on October 9, 1975, the Assistant United States Attorney mailed a similar letter to defendant M. Lichtman enclosing some Rule 16 material and indicating that other material was available for inspection. Unfortunately, none of these communications regarding Rule 16 materials were known to the Court since no copies of these letters were sent to the Court or docketed.

This, then, was the posture of the case when the Court reviewed it prior to assigning a trial date. The continued pendency of defendant J. Lichtman's motion to dismiss for pre-indictment delay, some discrepancies with regard to the various bills of particulars, and the apparent lack of response to the

various discovery requests caused the Court to question the genuineness of the Government's Notice of Readiness. Consequently, the Court, sua sponte, ordered a hearing to inquire into the matter and to prepare a record for any eventual appellate review. United States v. Valot, 473 F.2d 667 (2d Cir. 1973); United States v. Scafo, 470 F.2d 748 (2d Cir. 1972), cert. denied, 414 U.S. 1012 (1973). For the reasons set forth below, the Court is satisfied that the Government had, in fact, complied with the spirit of Rule 5 and was ready for trial when the notice was filed.

The Court will address the various claims raised by each of the five defendants. As to defendant M. Lichtman, he had made no motions and has no claim herein. He was served with the Government's bill of particulars and memorandum in opposition to those demands not particularized which was filed on October 10, 1975. He was also a recipient of the Government's May 30 letter which included some Rule 16 material and an invitation to inspect the remainder of the Rule 16 material to which the Government felt he was entitled. Thus, as to him, it is clear that the Government had complied with Rule 5.

Similarly, defendant Goral only filed his motions on October 31, 1975, and he therefore has no claim that the Government was not ready when it filed its Notice of Readiness on October 10, 1975. As with M. Lichtman, Goral had received the materials pursuant to Rule 16 and had received the Government's

bill of particulars and memorandum. Thus, as to defendant Geral, the Court concludes that the Government has met the requirements of Rule 5.

Defendant Greco's motions for a bill of particulars and for document production pursuant to Rule 16 were filed prior to the filing of the Notice of Readiness. Greco was timely served with both the May 30, 1975 letter regarding document production and the October 10, 1975 bill of particulars and memorandum. Greco claims that the bill of particulars was not responsive. This claim, however, does not go to the Government's readiness for trial, but rather to the substances of the responses. The matter is sub judice and will be decided infra. The Government did what it was required to do under Rule 5. Defendant Greco also claims that "there was no attempt to have the defendant view the alleged materials to be disclosed until May 10, 1976, when affiant received a call from [the Assistant United States Attorney currently handling the case] inviting him to come in and view the said documents on file in his office." (Affidavit of Jerold C. Weissfeld, dated May 28, 1976, at 2). This claim flies in the face of the Government's invitation to inspect documents in May of 1975 and ignores the fact that, once invited, the onus was on the defendant to come in and inspect the documents at the United States Attorney's office. Thus, as to defendant Greco, the Court concludes that the Government was in compliance with Rule 5.

Defendant Mayer's motions, timely filed, sought a bill of particulars, Rule 16 discovery, and Brady material. In his letter to the Court, dated August 29, 1975, counsel for defendant Mayer indicated that the claim with regard to Brady material was apparently quieted, noting that "[the Assistant United States Attorney then handling the case] has further stated that the prosecution had no items to produce, pursuant to item 3 of the motion." (Exhibit B appended to the Affidavit of Eugene Bannigan, dated May 14, 1976).

The Government mailed the May 30, 1975 letter regarding Rule 16 material to Mayer. Also, the Government timely served Mayer with the bill of particulars and the memorandum. There is, however, some apparent confusion with regard to the bill of particulars. Defendant Mayer's counsel states that "[a]t no time either prior to or subsequent to September 19, 1975, and right up until the present day, i.e., May 25, 1976 have I ever received either any opposition papers from the United States Attorney's Office in opposition to the aforesaid motion or a bill of particulars." (Affidavit of Melvin D. Kraft, dated May 25, 1976, at 7). Curiously, the sworn affidavit of service appended to the bill of particulars as well as the sworn affidavit of service appended to the Government's memorandum indicate that proper service by mail was made upon counsel for defendant Mayer. The Court, crediting both assertions, can draw only one conclusion in the face of this unusual state of facts,

namely, that these documents, properly posted, were lost in the mails or somehow never received by defendant. The first time that the Court was made aware of this discrepancy and, so far as the Court can ascertain, the first time that the Government was made aware that the materials were not received was on May 14, 1976, the day of the Court's hearing on the instant matter. Apparently, no complaint had issued from the defendant in the interim. On this state of facts, the Court concludes that the Government cannot be held responsible for the loss in the mails (of which it had no notice) after a proper posting.

Defendant Mayer also makes several claims with regard to Rule 16 discovery items. Initially, Mayer acknowledges receipt of the May 30 letter. It appears that when Mayer's counsel responded to the invitation to inspect documents, on August 27, 1975, the Assistant United States Attorney then handling the case also agreed to provide two additional items (the fifth, post-effective, amended notification of Minute Approved Credit Plan and a statement of J. Lichtman). Mayer contends that these items were not turned over as promised. Mayer also claims that the Assistant United States Attorney informed him at the time that the materials inspected, plus those promised, comprised all of the discovery to which Mayer was entitled. It is Mayer's contention that a great deal of additional information has been unearthed subsequently which

he was not aware of on August 27, 1975, and to which he was entitled.

As to the two pieces of information allegedly promised by the Government but not delivered, one has been delivered by the Government (the fifth, post-effective, amended notification of Minute Approved Credit Plan) and the other (the statement of the co-defendant), although in the Court's view not discoverable, should have been turned over by the date of the filing of this opinion. The Government has stated that the reason for failing to turn these items over sooner was mere inadvertence, i.e., these items were overlooked as case responsibility passed from one Assistant United States Attorney to another. So far as the Court can perceive, no demand was ever made for these items, and certainly it was never brought to the attention of the Court. In light of the apparent waiver, and since the Government has agreed to turn these items over, the Court holds that this is no basis for the dismissal of the indictment.

Regarding the additional documents allegedly furnished for the first time in May of this year, the Assistant United States Attorney now handling the case indicated, at the May 14 hearing, that all of those documents properly discoverable by Mayer had been made available to him on his initial visit. The Assistant stated that his personal view with regard to discovery was somewhat more liberal than the view adopted by

many of his colleagues, and that consequently he made many documents available which were not strictly called for under Rule 16. The Court has reviewed the list of documents turned up on the second visit and finds that while not all of the documents are properly discoverable, many are within the purview of the Rule. However, the Court also notes that almost none of the documents were the subject of the defendant Mayer's motion. Since the Rule requires a defendant to make a request of the Government before a duty devolves upon the Government, and since there was no such request, the Court concludes that there can be no duty. While the Court does not condone this undisciplined handling of discovery matters, the Court must conclude that the Government was within the sweep of Rule 5 and will not dismiss the indictment as to this defendant. The Government was ready to try its case and had complied in almost all respects with this defendant's demands (with the two minor exceptions noted previously). Thus, it is the Court's opinion that the Government had fulfilled its obligation to this defendant sufficient to withstand a Rule 5 attack.

Defendant J. Lichtman timely filed motions for a bill of particulars and to dismiss the indictment for pre-indictment delay. He was served with the Government's bill of particulars and accompanying memorandum in timely fashion. He received the May 30 letter from the Government regarding Rule 16 material and an additional letter, dated June 16, 1975, which con-

tained a copy of J. Lichtman's second appearance before the grand jury.

Defendant J. Lichtman claims that the Government's responses to his demand for a bill of particulars were inadequate. The substance of this claim will be reviewed infra. For present purposes, suffice it to say that the Government's response was timely and this claim is therefore no basis for a dismissal of the indictment.

Much more serious, in defendant's view, is the failure of the Government to respond to the motion to dismiss for pre-indictment delay until May 11, 1976, some seven months after the filing of the Notice of Readiness. The Government's excuse for not responding to the motion in timely fashion is that the Assistant United States Attorney who inherited the case and reviewed and answered motions merely overlooked this outstanding matter. The Government asserts that this is excusable and further contends that the motion is meritless.

The merits of the motion or the lack thereof notwithstanding, one thing is clear. While the failure of the Government to make a timely response to the motion is merely one more indicator of the sloppy handling of this case, it is absolutely irrelevant to the question of the Government's readiness to proceed to trial. This motion could have been interposed contemporaneously with the filing of the indictment, before the filing of the Notice of Readiness, after the filing of the

Notice of Readiness, or, for that matter, on the eve of or during the trial. If the motion had merit, then the indictment, as to this defendant, would fall. The motion simply has nothing to do with the Government's readiness or for that matter with the Government's obligations to the defendant. In so concluding, the Court clearly does not endorse the Government's conduct, but sloppy conduct would not justify the dismissal of the indictment in this case.

Mayer Dismissal Motion--5th Amendment

Defendant Mayer also seeks an order of this Court dismissing the indictment based upon an alleged violation of his rights under the Fifth Amendment to the United States Constitution for the failure of the prosecutor to inform him, prior to his giving of testimony before the grand jury, that he was a target of a federal felony investigation. Defendant does not contend that a prospective defendant may never be called to testify before a grand jury, but only that he must be given such minimal warning as will allow him to recognize the consequences of his testimony and to intelligently decide whether to invoke his Fifth Amendment rights. It should be noted, however, that suppression of the witness' testimony and not dismissal of the indictment would be the proper remedy here.

Certain facts are uncontroverted. Mayer is a college graduate and was co-manager of one of the offices of A. C.

Kluger & Company. Prior to the questioned appearance before the grand jury, he had been called and had testified twice before the Securities and Exchange Commission. He had been accompanied by counsel on each of those occasions and had been advised of his constitutional rights. He had also been advised of the subject of the inquiry before the Securities and Exchange Commission. He had been named in a complaint before the Commission and had settled those charges. Finally, prior to his appearance before the grand jury, Mayer had discussed the facts of this case with the Assistant United States Attorney.

The decisional law in this Circuit appears to hold that it is sufficient if witnesses before the grand jury are given the "substance" of the Miranda warnings. United States v. Corallo, 413 F.2d 1306, 1328-30 (2d Cir.), cert. denied, 396 U.S. 958 (1969); United States v. Guthrie, 76 Cr. 21 (S.D.N.Y., filed May 17, 1976); United States v. Potash, 332 F. Supp. 730, 732-33 (S.D.N.Y. 1971). This witness was given the "substance" of the Miranda warnings prior to his testimony.[1/]

The question of the necessity for target warnings is somewhat less settled. The United States Court of Appeals for the Second Circuit was faced with this question recently in United States v. Jacobs, No. 75-1319 (2d Cir., February 24, 1976), but expressly declined to reach either the claimed "self-incrimination" violation or the claimed "due process" violation under the Fifth Amendment. Id. at 2115. Under its

general supervisory power, the court instructed all prosecutors in this Circuit that where the prosecutor believes that a witness before the grand jury is also a potential defendant, the witness should be informed, prior to the commencement of any questioning, that he is a "target" of the investigation. Id. at 2115-17. This Court is in accord with the opinion expressed by Judge Pierce in United States v. Guthrie, supra, 76 Cr. 21, that the decision in Jacobs, based on the supervisory power of the Court of Appeals, is prospective in application. Id. at 5. Thus, since the appearance of Mayer pre-dated the Jacobs decision by almost one year, that decision can have no applicability here.

While "target" warnings are not required in every case, United States v. Guthrie, supra, 76 Cr. 21, at 6, the question before this Court is whether due process requires the warning on the facts of this case. Unfortunately, the Court is not possessed of sufficient factual material from the Government upon which to make this determination. Accordingly, the Court orders the Government to submit an affidavit detailing: (1) the sources of information which the Government had in its possession concerning Mayer's alleged involvement herein and the substance of the information it had from each of those sources at the time of Mayer's first appearance before the grand jury; (2) whether in its estimation Mayer was merely a "witness" or was a "putative defendant"; (3) when the decision to indict

was, in fact, made; (4) the investigatory function, if any, to be served by Mayer's appearance; and (5) any and all other facts bearing on this issue. This affidavit is to be submitted to the Court within ten days of the date of filing of this opinion.

J. Lichtman--Dismissal Motion Based on Pre-Indictment Delay

Defendant J. Lichtman moves for a dismissal of the indictment as to him based on alleged pre-indictment delay. Defendant claims that he initiated the investigation in this case in August of 1972 when he complained to the Securities and Exchange Commission, claiming that he was swindled when his company, Minute Approved Credit Plan, attempted to go public. Defendant claims that the Government virtually abandoned any effort at prosecution throughout all of 1973 and most of 1974. Defendant further asserts that the Government promised not to prosecute him in return for his information. He asserts that he has knowledge of several witnesses who could so testify at a hearing. In essence, the claim here is that the Government delayed its prosecution in order to gain a tactical advantage.

The Government contends that it was actively engaged in the investigation and preparation of this complex case from the date of the alleged commission of the crime until the date of the filing of the indictment, some two years and eight months later. The Government alleges that during this period of time

no defendant was arrested, and that the applicable five-year statute of limitations, 18 U.S.C. § 3283, had not expired.

The primary guarantee against the prosecution of stale criminal charges is the statute of limitations. United States v. Ewell, 383 U.S. 116, 122 (1966).

> "It is true that this circuit has stated that a pre-arrest delay may deprive defendant of a constitutional right, if there is a showing that the delay 'was prejudicial or part of a deliberate, purposeful and oppressive design for delay.'" United States v. Sanchez, 361 F.2d 824, 825 (2d Cir. 1966).

Defendant claims that the delay was inherently prejudicial. This claim is insubstantial and speculative. No mention has been made of specific evidence which has disappeared or witnesses not now available. Thus, the claim of prejudice must fail.

Similarly, defendant has failed to show a "deliberate, purposeful and oppressive design for delay." While alleging that he could produce witnesses who promised not to prosecute him, defendant has not made known the identity of even one witness to the Court. There has been no showing that the Government has in any way benefited from the delay, except to the extent that it carefully investigated and prepared its case. These bare allegations on the part of this defendant do not rise to a level sufficient to create a factual issue necessitating a hearing of the matter. The motion is denied.[2/]

Goral--Grand Jury Minutes

Defendant Goral seeks an order of this Court permitting him to obtain a copy of the grand jury minutes upon which the indictment against him is based so that he might determine whether there was sufficient evidence to warrant the return of a true bill and further to determine whether the indictment is based on illegal evidence or hearsay.

Where an indictment, valid on its face, is returned by a legally constituted and unbiased grand jury, this Court will not review the sufficiency of the evidence before that grand jury. United States v. Callahan, 300 F. Supp. 519, 523 (S.D. N.Y. 1969). See also Costello v. United States, 350 U.S. 359 (1956). In addition, it is clear that the grand jury may consider both incompetent evidence and hearsay. United States v. Calandra, 414 U.S. 338 (1974); Costello v. United States, supra, 350 U.S. 359.

The only basis for this motion is rank speculation that there was no evidentiary basis for the indictment or that the indictment was based on incompetent or hearsay evidence. This unsupported allegation does not present a sufficient basis for this Court to order the disclosure of the grand jury minutes and the motion is accordingly denied.

Brady Material

The affidavits submitted herein indicate that the Government has either already provided any Brady material within its possession or will do so in timely fashion in the future. The Court need not consider the matter any further.

Bills of Particulars

Mayer

As to defendant Mayer, the Government has sufficiently answered demands 1, 3, 4, 6, 7, 8, 9, 10, and 12. Demands 2, 5, and 11, to which the Government objects are not properly interposed and the Government need not respond.

Goral

As to defendant Goral, the Government has sufficiently answered demands a, b, c, d, e, f, l, n, o, p, q, t, u, v, w, x, y, z, aa, bb, and cc. The Government has properly objected to demands g, h, i, j, k, m. r, and s.

Greco

As to defendant Greco, the Government has sufficiently answered demands 1, 2, 3, 4, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, and 25.

The Government has properly objected to demands 7, 10, 11, and 19.

The Government is hereby ordered to respond to demands 5, 6, 8, and 9.

J. Lichtman

As to defendant J. Lichtman, the Government has sufficiently responded to all of his demands and no further responses are necessary.

Goral and Greco Motions to Preclude

Based on the foregoing holdings of the Court with regard to the Government's responses to the demands for bills of particulars of the various defendants, these motions are denied.

Accordingly, the motions of all defendants to dismiss for failure of the Government to comply with Rule 5 of the Plan are denied; Mayer's motion to dismiss for failure to be informed that he was a "target" of the investigation is adjourned pending the receipt by the Court of the affidavit from the Government; J. Lichtman's motion to dismiss for pre-indictment delay is denied; Goral's motion to inspect grand jury minutes is denied; the motions of all defendants for Brady material are now moot; motions of all defendants for bills of particulars are denied, except to the extent indicated above; and the Goral and Greco motions to preclude are denied. In addition, it appears to the Court that the Government has fulfilled its obligations

under Rule 16, subject to its duty to supplement those materials.

So ordered.

Dated: New York, New York

August 5, 1976

Charles H. Tenney

U.S.D.J.

UNITED STATES OF AMERICA
-against-
IVAN ALAN EZRINE, et al.,
Defendants.

75 Cr. 363 (CHT)

FOOTNOTES

1/ The transcript of this defendant's March 19, 1975, appearance before the grand jury contains the following exchange:

Q This Grand Jury is investigating violations of the Federal laws in New York and the laws governing security transactions.

Do you understand that?

A Yes.

Q You have a right to refuse to answer any question that might tend to incriminate you.

Do you understand that right?

A I understand.

Q In addition, you should understand that the principal consequences of waiving that right and answering questions includes your answers being used against you in some later proceedings.

A I understand that.

Q You have a right to consult with an attorney outside of this room prior to answering any question and retain an attorney or we can appoint one if you cannot afford one.

Do you understand that?

A Yes, I understand that.

Q On March 3rd you came with an attorney to my office and there discussed some of these facts of Minuta Approved Credit Plan.

FOOTNOTES
11

Did you not?

A That is correct.

Q His name was Irving Eiferman?

A That is correct.

Q Mr. Eiferman knows you are here today and you talked with him with respect to your appearance here?

A I believe he knows, but I did not speak to him with respect to my appearance here.

My brother called up.

I assume he made the appointment and my brother just got the time from him when to come down.

2/ Defendant Goral likewise moves for a dismissal of the indictment based on pre-indictment delay. His showing is even less compelling than that made by defendant J. Lichtman. and the motion is accordingly denied.

United States Department of Justice

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
ONE ST. ANDREW'S PLAZA
NEW YORK, NEW YORK 10007

ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER

VTF,JR:dlf

September 7, 1976

Hon. Charles H. Tenney
United States District Judge
Room 1904
United States Courthouse
Foley Square
New York, New York 10007

Re: United States v. Ivan Ezrine, et al.
75 Cr. 363 (CHT)

Dear Judge Tenney:

Assistant United States Attorney W. Cullen MacDonald, who presented this case to the grand jury in late 1974 and the spring of 1975, and the undersigned during the past week have attempted to draft an affidavit in response to the items specified at pages 15-16 of your memorandum and order dated August 5, 1976.

We have come to the conclusion that to respond with any specificity and certainty to item (1) as presently defined -- i.e., to reconstruct the "sources of information" and the "substance of the information" from each source which the Government had in its possession at the time of Leon Mayer's first appearance before the grand jury relating to the ultimate allegations against him in the indictment -- necessitates a review of all testimony and notes and memoranda of interviews prior to that date. To illustrate the scope of this task, the transcripts of the testimony taken by officers of the Securities and Exchange Commission in the

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MELVIN D. KRAFT, P.C.

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VTF,JR:dlf

investigation of Minute Approved Credit Plan, Inc., exceed 1500 pages. After this material is reviewed, it would be necessary to organize and write a narrative response. It appears to us that two methods of organization would provide the degree of detail indicated: (1) a chronological summary of the gathering of all pertinent information prior to Leon Mayer's first grand jury appearance; or (2) a statement of the basis for each question asked at Leon Mayer's first grand jury appearance. We have not been able to complete this task since Mr. MacDonald returned from vacation last week, and we estimate that we would not be able to finish before the end of next week.

While we, of course, will attempt to provide to the Court any material specified, we would appreciate an indication from the Court if this sort of undertaking is what the Court had in mind before we proceed further in preparation of a response to item (1) along the lines indicated. Alternatively, we would ask the Court to consider whether a response to item (1) might be deferred pending the Court's consideration of a response to items (2), (3) and (4).

With respect to items (2), (3) and (4), it would also be helpful if the Court could give us some further guidance as to the nature of the factual material desired.

Item (2) uses the phrase "putative" defendant. If this refers to the definition in the recent opinion by Mr. Chief Justice Burger in United States v. Mandujano, 44 U.S.L.W. 4629, 4634 (U.S.May 19, 1976), it is clear from the transcript of Leon Mayer's first grand jury appearance previously submitted to the Court that he was a "putative" defendant since "the prosecutor had specific information concerning [Mayer's]

participation in [the fraud] and the focus of the grand jury interrogation, as evidenced by the prosecutor's questions, centered on [Mayer's] involvement in [the fraud]." If the Court has something else in mind by use of this phrase, we will submit a further response upon request.

Item (3) asks when the "decision to indict was, in fact, made". Legally and factually, of course, the "decision to indict" was made by the grand jury after it commenced its deliberations. We believe, however, that the Court seeks information about when the decision to recommend an indictment was made. A decision to recommend an indictment such as the one here is made at various levels in the United States Attorney's Office: by the Assistant United States Attorney assigned to the investigation; by the Chief of the Securities Fraud Unit; and by the Chief of the Criminal Division. We are not clear whether the Court wants us to attempt to reconstruct a detailed chronology of when the recommendation of an indictment was considered by each of those levels.

Item (4) inquires about the investigative function of Leon Mayer's appearance. In general, it was the same as that described by Mr. Chief Justice Burger in Mandujano: "to call before [the grand jury] persons suspected of criminal activity, so that the investigation can be complete" and "to summon individuals who may be able to illuminate the shadowy precincts of corruption and crime." 44 U.S.L.W. at 4632. If the Court seeks a different type of information, we will attempt to comply.

We do not believe that we should be required to make any response which would disclose details of the Government's investigation available to defendants. Rule 16(a)(2) of the Federal Rules of Criminal Procedure specifically provides that much of the factual material which would be included in an affidavit responding to the items as presently defined in the Court's memorandum is information not subject to disclosure under rule 16. To allow defendants to obtain this information through the device of the sort of motion made by defendant Leon Mayer here would subvert the intent of that rule.

This is particularly true given the flimsy factual foundation for Leon Mayer's motion. The whole premise of his motion is that he did not understand that he was a possible defendant when he waived his fifth amendment right to refuse to testify at his first grand jury appearance on March 19, 1975. In his "speech" to the grand jury on March 21, 1975, however, Leon Mayer stated: "I don't know in what respect I'm being called over here. I don't know whether I'm being called here as a defendant. I don't know whether I'm being called here as being guilty of something. I don't know whether I'm being called here as a witness." (pp.33-34). Those words certainly make clear that Leon Mayer understood that he might be named a defendant. It is difficult to understand how use of the word "target" could convey much more. There has not been any affidavit submitted by Leon Mayer on this motion nor any affidavit submitted by any of his prior attorneys -- J. Edward Meyer, Bruce Rich, Bert Gusrae and Irving Eiferman -- in support of his claim of naivete on March 19.

VTF,JR:dlf

We request that the Government's time within which to submit an affidavit in response to the Court's memorandum and order dated August 5, 1976, be extended pending clarification of the matters raised in this letter.

Respectfully yours,

ROBERT B. FISKE, JR.
United States Attorney

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V. THOMAS FRYMAN, JR.
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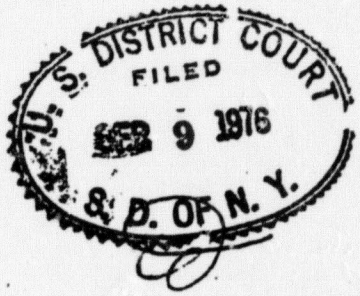

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

IVAN ALAN EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, LEON MAYER, EDWARD VASSALLO, LAWRENCE GORAL, and ANTHONY L. GRECO, JR.,

Defendants.

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75 Cr. 363 (CHT)

NOTICE OF MOTION FOR REARGUMENT

SIRS:

PLEASE TAKE NOTICE that upon the memorandum decision of Honorable Charles H. Tenney, District Judge, dated August 5, 1976, the annexed affidavit of Melvin D. Kraft, sworn to the 8th day of September, 1976, and all papers heretofore filed and proceedings heretofore had, defendant Leon Mayer will move this Court at the United States Courthouse, Room 1904, on September 20, 1976, at 10:30 a.m., for an order granting reargument of that branch of defendant Leon Mayer's motion brought on by notice of motion dated May 25, 1976, which seeks dismissal of the indictment on the ground that the prosecutor was not ready for trial within six months from the filing of the indictment, as required by Rule 5 of the Plan for Achieving Prompt Disposition of Criminal cases; said reargument is respectfully requested on the

ground that the Court overlooked certain basic, material facts in its decision and that, upon such facts, the motion should be granted and the indictment dismissed; and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 8, 1976

MELVIN D. KRAFT, P.C.
Attorney for Defendant
Leon Mayer
36 West 44th Street
New York, New York 10036
(212) 575-7800

TO: ROBERT B. FISKE, JR.
U.S. Attorney for the Southern
District of New York
by: V. Thomas Fryman
Assistant U.S. Attorney
1 St. Andrews Plaza
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------*

UNITED STATES OF AMERICA

-against-

75 Cr. 363 (CHT)

IVAN ALAN EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, LEON MAYER, EDWARD VASSALLO, LAWRENCE GORAL, and ANTHONY L. GRECO, JR.,

MOVING AFFIDAVIT

Defendants.

----------*

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MELVIN D. KRAFT, being duly sworn, deposes and says:

1. I am counsel herein for defendant Leon Mayer, and respectfully move this Court for reargument of that portion of its memorandum decision dated August 5, 1976, which denies that branch of defendant Mayer's motion, brought on by notice of motion dated May 25, 1976, which seeks dismissal of the indictment on the ground that the prosecutor was not ready for trial within six months from the filing of the indictment, as required by Rule 5 of the Plan for Achieving Prompt Disposition of Criminal Cases, hereinafter referred to as the Plan.

2. I respectfully submit that the Court, in its decision, has overlooked certain facts in the record in coming to the conclusion it has reached.

A. MAYER'S RIGHT TO A BILL OF PARTICULARS

3. In Mayer's motion to dismiss for failure of the government to be ready for trial within six months of the filing of the indictment, Mayer first urged the Court to consider the fact that he did not receive a bill of particulars, prior to the expiration of the six-month period or, for that matter, thereafter. The Court found as a fact on this issue that the government had mailed a bill of particulars to me, as counsel for Mayer, and that I had not received such bill of particulars due to a mishap in the mails. In order to put this matter fully in context before the Court, I will quote below the portion of the Court's decision to which I have just referred:

> Also, the Government timely served Mayer with the bill of particulars and the memorandum. There is, however, some apparent confusion with regard to the bill of particulars. Defendant Mayer's counsel states that "[a]t no time either prior to or subsequent to September 19, 1975, and right up until the present day, i.e., May 25, 1976 have I ever received either any opposition papers from the United States Attorney's Office in opposition to the aforesaid motion or a bill of particulars." (Affidavit of Melvin D. Kraft, dated May 25, 1976 at 7). Curiously, the sworn affidavit of service appended to the bill of particulars as well as the sworn affidavit of service appended to the Government's memorandum indicate that proper service by mail was made upon counsel for defendant Mayer. The Court, crediting both assertions, can draw only one conclusion in the face of this unusual state of facts, namely, that these documents, properly posted, were lost in the mails or somehow never received by defendant. (Emphasis ours) (Memorandum, pp. 8-9)

4. In so deciding, the Court, however, overlooked the fact that the paper entitled "bill of particulars" which was mailed to me was not addressed to Mayer's motion or demand and, therefore, was not and is not the bill of particulars sought by Mayer's motion. Indeed, the prosecutor who framed the bill

stated under oath that the bill which was mailed did not respond to Mayer's demand. I refer to the following statement by Eugene Bannigan, the Assistant United States Attorney then in charge of the case, who ostensibly prepared the bill in question, in his affidavit verified May 14, 1976:

> The only outstanding motion by defendant Leon Mayer was a demand for a bill of particulars. Mayer had previously moved for (1) a bill of particulars; (2) production of documents; and (3) production of Brady v. Maryland material. However, Mayer's attorney, Melvin D. Kraft, Esq., had indicated, in an August 29, 1975, letter to the Court, that items 2 and 3 had been resolved. (A copy of the August 29, 1975, Kraft letter is annexed hereto as Exhibit B.) Due to an inadvertent oversight, caused partly by unfamiliarity with all aspects of the file of this newly-assigned case, I did not respond to Mayer's demand when I responded to those of Greco and Joseph Lichtman. (Emphasis ours) (Bannigan affidavit, p. 3)

5. The bill of particulars to which Mr. Bannigan referred in his affidavit and to which the Court referred in its decision as having been mailed by the government to me and which was, in fact, received by me, was a bill addressed to the demands of defendants Greco and Lichtman and not to those of Mayer, as the Bannigan affidavit, above-quoted, points out.

6. The fact that the bill of particulars in question was not intended to and did not respond to Mayer's demand is not only true as a matter of Mr. Bannigan's sworn intent, but appears clear upon an examination of that bill of particulars, side-by-side with the items in Mayer's demand. For the sake of facilitating the Court's examination of these papers, I annex hereto the items of Mayer's motion for a bill of particulars as Exhibit "A" and the bill of particulars, above-mentioned, as Exhibit "B". Although item no. 1 of the bill (Exhibit B)

corresponds to item no. 1 of the Mayer motion, item no. 2 of the bill deals with the overt acts specified in the indictment, whereas Mayer's motion seeks overt acts not specified in the indictment, and the gap between the two documents thereafter continues to widen. It will be noted that items 4 and 5 of the bill do not respond to anything in Mayer's demand and, on the whole, [with the exception of item no. 1] there is no substantial correlation between the bill (Exhibit B) and Mayer's motion (Exhibit A). I, as Mayer's counsel, never even conceived of the possibility that this piece of paper was the prosecutor's response to Mayer's motion for a bill of particulars.*

7. Further proof that Mr. Bannigan was not intending to respond to Mayer's motion for a bill of particulars when he served this bill (Exhibit B) is contained in the government's memorandum, which I received on the same day as I did the above-referred to bill of particulars, a copy of which memorandum is annexed hereto as Exhibit "C". This document states at the outset:

> The Government submits this memorandum in opposition to the motions for the defendants Joseph Lichtman and Anthony L. Greco for a bill of particulars. (Government's Memorandum in Opposition to Motions in a Bill of Particulars, p.1)

8. The cursory statement in the Bannigan affidavit that his omission to send a bill to Mayer was "inadvertent" is not and cannot be a defense to the requirements of the Plan. In effect, the Bannigan affidavit admits the neglect of the prosecution to serve a bill or otherwise respond to Mayer's motion but sets forth no facts or circumstances to show that the neglect was excusable.

---

* The Court's conclusion that the prosecutor has "sufficiently answered" the items of Mayer's demand (except for items nos. 2, 5, & 11) at p.19 of its decision seems to flow from its assumption that as a matter of fact, the government intended the bill which was mailed to be a response to Mayer's motion which, as shown above, was not the case.

9. Considering the crucial importance of a bill to a defendant like Mayer in a complex, multi-defendant securities fraud case, this record reeks with a gross violation of both the letter and spirit of the six-month requirement in the Plan.

Indeed, it is this deplorable circumstance that led the Court to initiate a hearing in this matter and to comment at the outset:

> I have had some concern in connection with this case insofar as trial readiness on the part of the government and the fact that only within the last few days have motions of the defendants been answered, and although the government filed its notice of readiness some seven months ago, I don't know, but it doesn't seem to me that the government is ready when there are outstanding motions on the part of the defendants. It makes a mockery of the rules. (Transcript of Hearing on May 14, 1976, p. 3)

Subsequently, when I brought this particular situation to the Court's attention, the following colloquy ensued:

> MR. KRAFT: I just want to be sure that some specifics are before you on Mr. Mayer's motion, and that is that the motion that I made on behalf of Mr. Mayer was filed in June of '75 and subsequently there were negotiations and discussions with Mr. MacDonald who was then in charge of the case, and we resolved what we thought was the discovery aspect of the motion, but we did not resolve the matter of the bill of particulars, and so by a letter I submitted that motion for decision to your Honor in late August, but no opposition was ever filed to that motion and no bill of particulars was ever given to me.
>
> THE COURT: That is what I mean. I can't decide matters ex parte.
>
> MR. KRAFT: I understand that. (Transcript of Hearing on May 14, 1976, p. 5)

10. Moreover, in this case, the failure of the prosecutor to serve the bill demanded by Mayer's motion or to enter any papers in opposition to Mayer's motion is no mere technical default.

Whatever may have been the result of Mr. Bannigan's evident haste in thumbing through the file [with which he was apparently not familiar] the night before the expiration of the six-month period, the continued failure of the new prosecutor to remedy the default for months afterward, despite urgings from the Court to do so,* defies any rational explanation and certainly makes a mockery of those Rules, i.e., the Plan.

11. Summarizing the clear and undisputed facts in this record:

(a) Mayer made a timely demand and then a motion for a bill of particulars;

(b) Mayer received no bill of particulars either in response to the demand or motion within the six-month period following the filing of the indictment;

(c) the government filed no opposition papers at any time to Mayer's motion for a bill of particulars; and

(d) today, one year and five months after the filing of the indictment, and a little over one month before the

---

* That fact appeared from the following colloquy at the May 14, 1976 hearing:

> THE COURT: Well, I think that you were informed by my chambers back in January or February that there were these motions outstanding, Mr. Timbers.
>
> MR. TIMBERS: Would you wish me to answer, your Honor?
>
> THE COURT: Yes.
>
> MR. TIMBERS: Yes. I was informed by Mr. Simon sometime after I received the case that there were outstanding motions. I can't recall the date, but I think that that is the time area within which I was informed by Mr. Simon. (Transcript of Hearing on May 14, 1976, p. 8)

0121

presently scheduled trial date (i.e., October 18, 1976), Mayer has not received a proper bill of particulars.

B. MAYER'S RIGHT TO DISCOVERY

12. In relation to Mayer's right to discovery and the prosecutor's response prior to the expiration of the six-month period, I believe that the Court has also overlooked certain critical facts. I wish to address myself to that portion of the Court's opinion which deals with the fact of whether or not a request was made for discovery on behalf of defendant Mayer. In this connection, the Court, in its August 5, 1976 decision, after reviewing the list of documents that had been turned over to me in May of this year, by the then Assistant United States Attorney in charge of this case, found that many documents were within the purview of Rule 16:

> The Court has reviewed the list of documents turned up on the second visit and finds that while not all of the documents are properly discoverable, many are within the purview of the Rule. (Memorandum, p.11)

After so finding, the Court said the following:

> However, the Court also notes that almost none of the documents were subject of the defendant Mayer's motion. Since the Rule requires the defendant to make a request of the Government before a duty devolves upon the Government, and since there was no such request, the Court concludes that there can be no duty. (Memorandum, p. 11)

13. Again, I believe that the Court has overlooked certain critical facts. Shortly after I entered the case, I had a telephone conversation with the then prosecutor, Mr. MacDonald, in which we discussed the subject of the motions (for a bill and

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discovery which I was prepared to make) and in which Mr. MacDonald assured me that I, as defense counsel for Mr. Mayer, would receive from him all the discovery materials and a bill of particulars without the necessity of formal motion. I confirmed this understanding to Mr. MacDonald in my letter to him dated May 5, 1975, the opening paragraph of which reads as follows:

> Confirming our previous telephone conversation and the one we had this morning, you have indicated that the prosecution will supply to me as defense counsel for Mr. Mayer, all the materials to which Mr. Mayer is entitled, without the necessity of formal motion.

My letter of May 5, 1975, to Mr. MacDonald was attached to the previous motion as Exhibit "C".

14. I relied completely on Mr. MacDonald's representation, which later turned out to be a misrepresentation, and conveyed that representation to the Court in my May 13, 1975 letter to the Court, in which I stated:

> Mr. MacDonald has indicated informally that pre-trial discovery items and a bill of particulars will be supplied by him voluntarily, without the necessity of any motion,...

A copy of that letter to the Court was annexed to Mayer's previous motion as Exhibit "B".

Consequently, when I wrote to the Court on August 29, 1975, and indicated that:

> Mr. MacDonald and I have conferred extensively and have resolved the issues in that portion of the motion relating to discovery....(Mayer's previous motion, Exhibit "G")

I meant that I had received a representation from an Assistant United States Attorney, upon which I relied, that I had been given everything by way of discovery to which I was entitled. Therefore, there was no reason to burden the Court with a motion.

It is certainly too clear for discussion that inasmuch as I was submitting a motion for a bill of particulars to the Court on August 29, 1975, if I had any inkling that I had not gotten all the documentation to which defendant Mayer was entitled, I surely would have expanded the motion to include discovery materials under Rule 16. In this connection, I refer to my pursuit of discovery materials under Rule 16 with Mr. Timbers which he admitted at the May 14, 1976 hearing:

> Mr. Kraft, on behalf of Mr. Mayer, has been very anxious to see the government's documents, and the government has provided them to him. (Transcript of Hearing on May 14, 1976, p. 23)

15. This is a case, then, where a timely request for discovery was made by defendant and the only reason that no motion was made is because (a) I was told at the outset by the prosecutor that no motion was necessary; (b) I was given documentation which I was led to believe by the Assistant United States Attorney represented what Mayer was entitled to in a conference with the said United States Attorney; and (c) I was thus misled into making no motion under Rule 16.

16. I again harken back to the words of the Court at the hearing on May 14, 1976, in which the Court said:

> I have read that [the Bannigan affidavit] and it shows that the government, so far as the government's case, was exhaustively prepared; they had been preparing it for a period of years. But it shows that the government had done little or nothing to fulfill its obligations to provide discovery for the defendants, and I don't consider that the government is ready for trial until it has performed all of its obligations with respect to timely motions.--- (Transcript of Hearing on May 14, 1976, p. 9)

17. In conclusion, I submit to the Court respectfully, as the Court itself observed, that this is a case where the government did not perform its basic obligations to provide defendant Mayer with either a bill of particulars or an affidavit in opposition to its motion for a bill of particulars or the discovery materials to which Mayer was entitled, on or before October 10, 1975, the date upon which the government filed its notice of readiness for trial. In that respect, the prosecution was not ready for trial on that date insofar as defendant Mayer was concerned.

WHEREFORE, I respectfully request on behalf of defendant Mayer that the Court grant the motion for reargument and, upon such reargument, dismiss the indictment as against defendant Mayer.

Melvin D. Kraft

Melvin D. Kraft

Sworn to before me this
8th day of September, 1976

Notary Public

JEROME TEICH
NOTARY PUBLIC, State of New York
No. 30-3946700
Qualified in Nassau County
Term Expires March 30, 1977

0125

[redacted] D. KNOTT, P.C.

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SCHEDULE OF [redacted] DRAFT
ATTACHED TO LETTER OF [redacted] 3, 1975
TO W. C. MACDONALD, DA[redacted]

(U.S.A. v. Ezrine, et al., [redacted] Cr. 363)

A. Bill of Particulars (Fed. R. Crim. P. 7(f))

(1) The names of all co-conspirators not named in the indictment who are presently known to the Government and their addresses at the time of their alleged participation in the alleged conspiracy.

(2) Any overt acts not enumerated in the indictment, concerning which acts the Government intends to offer evidence upon the trial of the indictment herein.

(3) The manner in which defendant Mayer is alleged to have falsified purchases of Minute Approved Credit Plan, Inc. ("MACP") stock, and the dates on which such falsification is alleged to have occurred (Count I, Par. III(e)).

(4) The address of the place where the alleged meeting among defendants Mayer and Murray Lichtman and Sidney Stein on December 14, 1971 is alleged to have occurred (Count I, Par. IV (1)).

(5) The name of the person who allegedly gave $20,000 to defendant Mayer as alleged in the indictment, and the date, time, and place of this alleged payment (Count I, Par. IV (2)).

(6) The statements or omissions in the MACP offering circulars which are alleged to be false and fraudulent (Count I, Par. 4(3), Par. 10).

(7) The matters constituting the "fraudulent character of such sales", which defendant Mayer is alleged to have failed to disclose (Count I, Par. 4(4)).

(8) Any material facts allegedly falsified, concealed or covered up, the substance of any false, fictitious or fraudulent statements or representations

EXHIBIT A

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allegedly made, and any false [illegible] and documents allegedly made and used which [illegible] described in Paragraphs 3 and 4 of Count One, [illegible] concerning which the Government intends to offer [illegible]nce upon the trial.

(9) The substance of any untrue statements of material facts and omissions to state material facts allegedly made by which defendants allegedly obtained money and property, which are not described in Paragraphs 3 and 4 of Count One, and concerning which the Government intends to offer evidence upon the trial.

(10) The nature of the participation of defendant Mayer in the mail and telephone communications alleged in Counts Three through Eleven, inclusive, of the indictment.

(11) The names and addresses of any witnesses who testified before the grand jury whom the Government does not intend to call as witnesses upon the trial of this indictment.

(12) A copy of each and every matter named in Counts Two through Seventeen, inclusive, of the indictment, including any and all envelopes in which it is claimed such matter was mailed or received (U.S. v. Pilnick, 267 F. Supp. 791, S.D.N.Y. 1967).

B. Request for Discovery and Inspection (Fed. R. Crim. P. 16)

Please produce for inspection and copying the following matter:

(1) All written or recorded statements made by defendant Mayer to the United States Attorney's Office or to the Securities and Exchange Commission, within the possession, custody, or control of the Government.

(2) Recorded testimony of defendant Mayer before the grand jury; and that of the other witnesses who will testify for the Government at the trial.

(3) The MACP offering circulars filed on or about February 10, 1972 and June 12, 1972.

(4) The Fifth Post-effective [redacted]ded Notification under Regulation A, Form 1-A, [redacted]or about July 19, 1972, described in Count Eighteen [redacted] the indictment.

C. Request for Exculpatory Material (Brady v. Maryland)

Please produce all material in the files of the United States Attorney's Office, or any other Government agency, which constitutes evidence or refers to or may lead to the discovery of evidence which tends to exculpate defendant of the charges set forth in the indictment.

MDK:ce

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RB:ko

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	
-v-	
IVAN ALAN EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, LEON MAYER, EDWARD VASSALLO, LAWRENCE GORAL and ANTHONY L. GRECO, Jr.,	BILL OF PARTICULARS 75 Cr. 363
Defendants.	

The United States of America, as and for its Bill of Particulars herein, alleges:

1. Additional co-conspirators not named as such in the indictment are: Leon Rafalowicz, Samuel Weinreb, Davey Petolla, Joey Sylvestri and Joan Grossman. The names of additional unnamed and unindicted co-conspirators, if any, will be furnished by a Supplemental Bill of Particulars which will be filed two weeks prior to trial.

2. The persons present, the place and the date of the overt acts are set forth below.

Overt Act	Persons Present	Place	Date
1	Murray Lichtman Leon Mayer Sidney Stein Isaac Mayer Mel Adler	A. C. Kluger & Co. 200 East 42nd St., New York, N.Y.	On or about December 14,1972
2	Leon Rafalowicz Murray Lichtman	Presently unknown	On or about January 28,1972
3.	Self explanatory	in light of clear allegations in indictment	
4.	Leon Mayer Murray Lichtman Joseph Lichtman Elliot Blair Michael Rich Mr. Beren Emanuel Quint	Glass & Greenberger 540 Madison Ave. New York, N.Y.	On or about July 17, 1972
5.	Self explanatory		
6.	Self explanatory		

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The mailings and telephone usages in Counts Two through Eleven, alleged as overt acts are self explanatory.

3. The object of the conspiracy was to sell and distribute shares of Minute Approved Credit Plan, Inc. ("MACP") to members of the public while fraudulently concealing and falsifying material information required to have been fairly and truly disclosed. The fraudulent mis-statements and fraudulent concealments included, but were not limited to:

(a) The defendants failed to disclose that prior to 1971, $20,500 was paid to Ivan Alan Exrine to be used by him to bribe brokers for selling MACP shares.

(b) The defendants failed to disclose that in 1971 $8,000 was paid to Ivan Alan Exrine to bribe brokers to sell MACP shares.

(c) The defendants failed to disclose that Sidney Stein and Michael Hellerman were secretly engaged to sell MACP shares.

(d)The defendants failed to disclose that Ivan Alan Ezrine had been enjoined from engaging in fraudulent conduct and practices in connection with the purchase and sale of securities; that Sidney Stein had been convicted of a crime involving the purchase and sale of securities; and that Michael Hellerman had been both enjoined from fraudulent conduct and practices in connection with the purchase and sale of securities and also convicted of a crime involving the purchase and sale of securities.

(e) The defendants failed to disclose that they had offered Sidney Stein $.80 per share over and above the $.70 a share listed in the offering circular for his efforts in selling the MACP issue.

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(f) The defendants failed to disclose that $20,000 cash as "front money" was delivered to Leon Rafalowicz to be secretly distributed to Sidney Stein and Leon Mayer, who had agreed to induce A. C. Kluger & Co. to underwrite the offering, at a rate of $0.80 per MACP share sold.

(g) The defendants failed to disclose that Ivan Alan Ezrine, Joseph Lichtman, Lawrence Goral, Anthony L. Greco, Jr., Leon Mayer, Edward Vassalo, Michael Ballerman and Sidney Stein falsified purchases of approximately 30,000 shares of MACP by advancing $150,000 under a secret agreement that MACP would repay such amounts.

(h) The defendant Joseph Lichtman falsely reported to the Securities and Exchange Commission that on July 17, 1972, 50,000 shares of MACP had been sold to the underwriter customers, when in truth and in fact only approximately 20,000 shares had actually been sold.

(i) The defendants failed to disclose that portions of the proceeds of the offering were to be immediately turned over to Lawrence Goral and Anthony L. Greco in the form of loans.

(j) The defendants failed to disclose that $26,500 of the proceeds of the offering would be loaned to Edward Vassallo.

(k) The defendants failed to disclose that they planned to use the proceeds of the offering to organize approximately 50,000 additional shares of MACP and then manipulate the market price of MACP to $20.00 per share.

(l) The defendants falsely stated in the offering circular that A. C. Kluger & Co. was to receive a commission of $35,000, whereas in truth and in fact as the defendants then knew A. C. Kluger & Co. would receive only $10,000.

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4. The following persons were nominees for Anthony L. Greco.

Joseph Farace
Ethel Cascella
Henry J. Bressack, Jr.
Philip J. Batista
Darlene Agriss

5. The following persons were nominees for Lawrence Goral:

Ira Lerman
Barbara Bartsch
Dores Bartsch
Carol Bartsch
Richard Bartsch
Susan Lerman

Dated: October 9, 1975
New York, New York

Yours etc.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York

By: _____
EUGENE F. HANNIGAN
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Lyon & Erlbaum, Esqs.
123-60 83rd Ave.
Kew Gardens, N.Y. 11415

Mr. Murray Lichtman
147-60 70th Rd.
Kew Garden Hills
Flushing, N.Y. 11367

Form No. USA 58-a7v
(Rev. 10-25-65)

i will please take notice that a ____
ich the within is a copy, was this day
ntered in the within entitled action,
e office of the Clerk of this Court.

ted, N. Y., _____, 19____

Yours, etc.,

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United States Attorney
Attorney for _____

Attorney for _____

ase take notice that the within _____
be presented for settlement and sig-
re of the Honorable _____
d States District Judge, at the office of
Clerk, Room 601, United States Court-
e, Foley Square, Borough of Manhat-
City of New York, on the ____ day of
_____, 19____, at 10:30 o'clock in the
noon or as soon thereafter as coun-
be heard.

ed, N. Y., _____, 19____

Yours, etc.,

United States Attorney
Attorney for _____

Attorney for _____

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

IVAN ALAN EZRINE,
JOSEPH LICHTMAN, MURRY LICHT
LEON MAYER,
EDWARD VASSALLO,
LAWRENCE CORAL and
ANTHONY L. GRECO, JR.,

Defendants.

BILL OF PARTICULARS
75 Cr. 369

PAUL J. CURRAN
TEL. [redacted]
791-0066

United States Attor
Attorney for U.

Due service of a copy of the within is he
by admitted.

New York, _____, 19

Attorney for

To

Attorney for

FPI—SS—6-13-74—50M—1214

EB:bo

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

IVAN ALAN KRINSK,
JOSEPH LICHTMAN,
MURRAY LICHTMAN,
LUCK MAYER,
RENARD VASSALLO,
LAURENCE GORAL and
ANTHONY L. GRECO,

Defendants.

GOVERNMENT'S MEMORANDUM IN OPPOSITION TO MOTIONS IN A BILL OF PARTICULARS

PAUL J. CURRAN
United States Attorney for the Southern District of New York
Attorney for the United States of America

EUGENE F. BANNIGAN
Assistant United States Attorney

- Of Counsel -

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BY EAS

EXHIBIT C

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

IVAN ALAN KZIRIM,
JOSEPH LICHTMAN,
MURRAY LICHTMAN,
LEON MAYER,
EDWARD VASSALLO,
LAWRENCE GOSAL and
ANTHONY L. GRECO,

Defendants.

GOVERNMENT'S MEMORANDUM IN OPPOSITION TO MOTIONS IN A BILL OF PARTICULARS

The Government submits this memorandum in opposition to the motions of the defendants Joseph Lichtman and Anthony L. Greco for a Bill of Particulars.

Argument

The purpose of a bill of particulars is to inform a defendant of the charges against him in sufficient detail to enable him to prepare his defense, to prevent surprise and to protect against subsequent prosecution for the same offense. Wong Tai v. United States, 223 U.S. 77 (1927). A bill of particulars is not a device to disclose the Government's evidence, lists of witnesses and legal theory in advance of trial. United States v. Lebron, 222 F.2d 531, 533-36

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(2d Cir.), cert. denied, 350 U.S. 876 (1955); Wiggs v. United States, 422 F.2d 509 (10th Cir. 1969); United States v. Verra, 203 F. Supp. 87, 92 (S.D.N.Y. 1962). Nor is its purpose to furnish a defendant with the Government's theory and manner of proof. United States v. Caine, 270 F. Supp. 801 (S.D.N.Y. 19 7); United States v. Carreau, Inc. 42 F.R.D. 408 (S.D.N.Y. 1967).

Notwithstanding these well recognized principles defendants Joseph Lichtman and Anthony L. Greco, Jr. have filed demands which, if granted, would require the Government to divulge virtually all its evidence in advance of trial. Such demands are hardly appropriate in this case since the indictment itself more than adequately particularizes the factual underpinnings of the charges, so that the defendants can prepare to meet the charges and avoid surprise. To the extent that the indictment requires any amplification, the Government has agreed to and in fact has already filed a bill of particulars sufficient to meet this purpose. We submit that further pre-trial disclosure is unnecessary and that, except to the extent that the Government has provided the requested information, the motions should be denied.

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CONCLUSION

Defendants' motions for a bill of particulars should be denied.

Respectfully submitted,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America.

EUGENE F. BANNIGAN
Assistant United States Attorney

- Of Counsel -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-against- : 75 Cr. 363 (CHT)

IVAN ALAN EZRINE, JOSEPH LICHTMAN, :
MURRAY LICHTMAN, LEON MAYER, :
EDWARD VASSALLO, LAWRENCE GORAL, :
and ANTHONY L. GRECO, JR., :

Defendants. :

MEMORANDUM

FILED
OCT 23 1975
S. D. OF N.Y.

APPEARANCES

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For prosecution-opponent
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Of Counsel: V. THOMAS FRYMAN, JR., ESQ.
Assistant United States Attorney

MICROFILM
OCT 20 1975

TENNEY, J.

Defendant Mayer brings this motion to reargue that part of this Court's earlier opinion denying his motion to dismiss the indictment against him on the ground that the prosecutor was not ready for trial within six months of the filing of the indictment, as required under Rule 5 of the Southern District

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Plan for Achieving Prompt Disposition of Criminal Cases. Although defendant does not specify the rule under which he proceeds in making this motion, he urges reconsideration of the facts already in the record before this Court, particularly those underlying his contention that the Government did not adequately respond to his request for a bill of particulars.

The request for particulars was originally made by Mayer's attorney on May 5, 1975. As mentioned in this Court's earlier opinion, Mayer's attorney stated in an affidavit filed May 25, 1976 that he had never received a bill of particulars from the Government. (Affidavit of Melvin D. Kraft, dated May 25, 1976, at 7). Mr. Kraft first informed the Court of this at a pre-trial hearing on May 14, 1976, more than one year after he had requested the particulars. In light of this long silence the present objection of Mayer's counsel is not supported by such prosecutorial delinquence as would warrant dismissal of the indictment at this time.

Furthermore, the prosecutor presently handling this case has advised the Court of a letter from Mayer's counsel dated March 17, 1976 concerning "Outstanding Matters Not Disclosed by the Government's Bill of Particulars." A comparison of the items enumerated in that letter with the twelve items listed in the original request of May 5, 1975 indicates that defense counsel considered only seven of the twelve items not disclosed. The Government appears to have answered four of

these seven "outstanding" requests (3, 4, 7 and 10). The other three requests (2, 5 and 11) were found by this Court to have been improperly interposed. Defendant Mayer has not submitted for the Court's consideration a memorandum as required by Rule 9(m) of the General Rules for the Southern District of New York "setting forth concisely the matters or controlling decisions which counsel believes the court overlooked." Accordingly, defendant Mayer's motion to reargue his earlier prayer for dismissal of the indictment predicated upon the Government's alleged failure to answer the demands for particulars is hereby denied.

This Court also concludes that Mayer's indictment should not be dismissed because of the prosecutor's failure to inform Mayer prior to his testifying before the grand jury that he was a target of its felony investigation. Mayer contends that such failure to receive "target warnings" amounts to a violation of his fifth amendment rights to due process and freedom from forced self-incrimination. The Supreme Court's recent decision in U.S. v. Mandujano, 44 U.S.L.W. 4629 (U.S. May 19, 1976) would appear to be dispositive of Mayer's fifth amendment claim in this case. In Mandujano, the Court held that full Miranda warnings need not be given to a grand jury witness who is called to testify about criminal activities in which he may have participated and that therefore the failure to give such warnings is no basis for suppressing, in a subsequent perjury prosecution, false statements made to the grand jury. Id.

The standard that emerges from the Mandujano opinion is whether or not, under the totality of circumstances involved, the witness undertook a knowing waiver of the privilege against compulsory self-incrimination. The Supreme Court emphasized that Miranda warnings were woven into this country's constitutional fabric in order to protect invididuals from the compulsion inherent in custodial interrogation. Relying on fundamental fairness as its criterion, the Court further based its decision on the distinction between custodial interrogation by law enforcement officers and agents and questioning in the judicial setting of a grand or petit jury. The Court acknowledged that in the latter setting there is realistically no threat of the intimidation through physical brutality and trickery that sometimes occurred when overzealous police officers sought to extort confessions. Just as a witness testifying before a petit jury is not entitled to special warnings, the witness called to testify before the grand jury need receive only those warnings "sufficient to inform him of his rights--and his responsibilities--and particularly of the consequences of perjury." Id. at 4634. Indeed, the Court specifically endorsed the practice of questioning the target of an investigation, noting that "no impropriety results from summoning the target of its inquiry; it is appropriate, in fact, to give that individual an opportunity to explain potentially damaging information before the grand jury decides whether to

return an indictment." Id. at 4636 n.9 (citation omitted).

It is clear that Mayer was in fact given Miranda warnings before testifying in front of the grand jury. (See this Court's earlier opinion dated August 5, 1976, n.1). Furthermore, it is not disputed that, prior to the grand jury appearance in issue, Mayer, a college graduate and co-manager of a corporation, had testified twice before the Securities and Exchange Commission after having been named in a complaint before that agency. On each of those occasions, Mayer was accompanied by counsel and was advised of his constitutional rights under the fifth amendment. Also in advance of his grand jury appearance, Mayer engaged in discussions with the Assistant United States Attorney regarding this case. The Court is satisfied on the basis of these facts that Mayer was aware of his rights and the possible impact of his testimony before the grand jury. The Court is also satisfied that he was not subjected to unfair coercive tactics or overbearing prosecutorial misconduct. On the contrary, it would be unfair to suppress testimony where a witness chose to answer such questions. As Mr. Justice Frankfurter once stated, the "Constitution does not forbid the asking of criminative questions." United States v. Monia, 317 U.S. 424, 433 (1943) (dissenting opinion).

Accordingly, the motion to dismiss the indictment of Mayer on the ground that the Government was not ready for trial within the requisite time period is denied. Furthermore, the

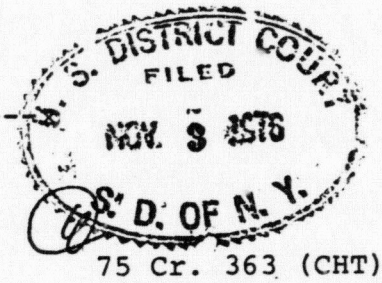
motion to dismiss the indictment against Mayer or suppress his grand jury testimony on the ground that he was not specifically warned that he was a target of the grand jury investigation is likewise denied.

So ordered.

Dated: New York, New York
October 19, 1976

Charles D. Stewart
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

- against -

IVAN ALAN EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, LEON MAYER, EDWARD VASSALLO, LAWRENCE GORAL, and ANTHONY L. GRECO, JR.,

Defendants.

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75 Cr. 363 (CHT)

ORDER TO SHOW CAUSE

Upon the annexed affidavit of Melvin D. Kraft, sworn to the 3rd day of November, 1976, and all papers heretofore filed and proceedings heretofore had, it is

ORDERED that the United States of America show cause on the 10th day of November, 1976, in the United States Courthouse, Room 1904, Foley Square, New York, New York, why an order should not be entered herein dismissing the indictment herein as against Leon Mayer, on the ground that the prosecutor was not ready for trial within six months from the filing of the indictment, as required by Rule 5 of the Southern District Plan for Achieving Prompt Disposition of Criminal Cases, and for such other and further relief as the Court may deem just and proper; and it is further

ORDERED, pursuant to Rule 49(b) of the Federal Rules of Criminal Procedure and Rule 6(d) of the Federal Rules of Civil Procedure that personal service of a copy of this Order to Show Cause, together with the attached affidavit, upon Robert B. Fiske,

Jr., U.S. Attorney for the Southern District of New York, by V. Thomas Fryman, Assistant U.S. Attorney, at their offices at 1 St. Andrew's Plaza, New York City, on or before the 3rd day of November, 1976, by 5:00 P.M., shall be deemed good and sufficient service.

Dated: New York, New York
November 3, 1976

Charles H. Tenney
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

0146

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UNITED STATES OF AMERICA

- against -

IVAN ALAN EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, LEON MAYER, EDWARD VASSALLO, LAWRENCE GORAL, and ANTHONY L. GRECO, JR.,

Defendants.

75 Cr. 363 (CHT)

MOVING AFFIDAVIT

----------x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MELVIN D. KRAFT, being duly sworn, deposes and says:

1. I am counsel herein for defendant Leon Mayer, and respectfully submit this affidavit in support of the annexed order to show cause dated November 3, 1976, by which I respectfully renew that branch of defendant Mayer's motion dated May 25, 1976, and decided on August 5, 1976, which seeks to dismiss the indictment on the ground that the prosecutor was not actually ready for trial within six months from the filing of the indictment, as required by Rule 5 of the Southern District Plan for Achieving Prompt Disposition of Criminal Cases, hereinafter referred to as the Plan.

2. I respectfully submit that new, critical facts, demonstrating further the failure of the prosecution to make substantial discovery materials available to defendant prior to the expiration of the aforesaid six-month period, have very recently come to light, i.e., in late October, 1976.

In order to place these new facts in proper perspective, I shall have to review briefly for the Court the facts relating to

discovery afforded Mayer since the inception of the case, which were previously brought before the Court in my prior affidavits on this subject, both on the original motion to dismiss the indictment referred to above, and on the motion to reargue brought on by Mayer's motion dated September 8, 1976.

3. Shortly after I entered the case, I had a telephone conversation with the then prosecutor, Mr. MacDonald, in which we discussed the subject of the motions (for a bill and discovery which I was prepared to make) and in which Mr. MacDonald assured me that I, as defense counsel for Mr. Mayer, would receive from him all the discovery materials to which defendant was entitled, and a bill of particulars, without the necessity of formal motion. I confirmed this understanding to Mr. McDonald in my letter to him dated May 5, 1975, the opening paragraph of which reads as follows:

> Confirming our previous telephone conversation and the one we had this morning, you have indicated that the prosecution will supply to me as defense counsel for Mr. Mayer, all the materials to which Mr. Mayer is entitled, <u>without the necessity of formal motion</u>.

A copy of my letter of May 5, 1975, to Mr. MacDonald is attached hereto as Exhibit "A".

4. I relied completely on Mr. MacDonald's representation, [which later turned out to be a misrepresentation], and conveyed that representation to the Court in my May 13, 1975 letter to the Court, in which I stated:

> Mr. MacDonald has indicated informally that pre-trial discovery items and a bill of particulars will be supplied by him voluntarily, without the necessity of any motion,...

A copy of that letter to the Court is annexed hereto as Exhibit "B".

Consequently, when I wrote to the Court on August 29, 1975, a copy of which letter is annexed hereto and marked Exhibit "C", and indicated that:

> Mr. MacDonald and I have conferred extensively and have resolved the issues in that portion of the motion relating to discovery....

I meant that I had received a representation from an Assistant United States Attorney, upon which I relied, that I had been given everything by way of discovery to which I was entitled. Therefore, there was no reason to burden the Court with a motion. This is a case, then, where a timely request for discovery was made by defendant and the only reason that no motion was made is because (a) I was told at the outset by the prosecutor that no motion was necessary; (b) I was given documentation, in a conference with an Assistant United States Attorney, which, I was led to believe by the Assistant United States Attorney, represented all documents in the Government's possession to which Mayer was entitled; and (c) I was thus misled into making no motion under Rule 16.

5. The documentation that was produced by the prosecutor on May 30, 1975, consisted of some 15 items, which, exclusive of the grand jury and SEC testimony of Leon Mayer, were all contained in one thin folder. A list of the items produced by the prosecutor on May 30, 1975, is attached hereto as Exhibit "D".

6. In May, 1976, I learned that there existed a substantial amount of additional discovery material to which defendant Mayer was entitled. I was wholly unaware of the existence of such material at the time of my abovementioned August, 1975 communications with Mr. MacDonald. I first learned about the existence of additional discovery materials from the then Assistant United States Attorney in charge of the case, Mr. Timbers, at a meeting in his office on March 8, 1976. At that meeting,

Mr. John Gussow, my associate, was also present. Subsequently, Mr. Gussow pursued the matter in several communications with Mr. Timbers, and obtained inspection of a substantial number of documents. When inspected, these documents were found to include a collated list of all of the purchasers of MACP stock, which Mr. Gussow inspected on or about May 6, 1976, and a substantial number of additional material documents which Mr. Gussow examined on or about May 11, 1976. A list of the latter documents is attached to this affidavit as Exhibit "E". It will be noted that among the documents so inspected was the fifth, post-effective amended notification which Mr. MacDonald promised to provide in August, 1975.

Photocopies of the substantial discovery documents referred to above in the list marked Exhibit "E" were actually picked up by me personally at the office of the United States Attorney on May 14, 1976, the same day that the Court conducted the hearing on the Government's alleged readiness for trial in October, 1975.

7. Moreover, Mr. Gussow was told by Mr. Timbers on or about May 11, 1976, that there were additional documents to which Mayer was entitled by way of discovery, and that those documents would be forthcoming in the future, when prepared by the prosecutor's office.

On August 5, 1976, the Court denied Mayer's motion seeking dismissal of the indictment on the ground of the prosecution's failure to make discovery materials available prior to the expiration of the six-month period in October, 1975, and on other grounds.

By notice of motion dated September 8, 1976, Mayer moved for reargument and on October 19, 1976, the Court issued its decision denying the reargument motion. However, the Court, in its decision, made no reference whatsoever to Mayer's complaint concerning lack of discovery prior to the expiration of the six-month period.

8. On October 19, 1976, the new prosecutor wrote a letter to all defense counsel, with a copy to the Court, concerning the present availability of voluminous and substantial additional discovery materials, which further demonstrates the gross, blatant deficiency of the discovery afforded to defendant Mayer by the prosecutor, prior to his filing of the Notice of Readiness in October, 1975. I refer to the letter of Mr. T.V. Fryman, the new prosecutor, to all defense counsel, dated October 19, 1976, apprising counsel of the fact that there are now some 128 file folders, and six SEC Registration files, plus 331 trial exhibits available for inspection at the Courthouse. A copy of the said letter and enclosures is annexed hereto as Exhibit "F".

9. Thus, now for the first time, at a date a little more than one full year after the filing of the prosecutor's Notice of Readiness for trial, and approximately two weeks before the scheduled commencement of the trial on November 8, 1976, the prosecutor appears to have finally made available the bulk of the discovery material to which Mayer was entitled over one year ago.

The amount of material is voluminous. The documents completely fill five file drawers, and partially fill two other file drawers of two large, 4 drawer filing cabinets. There are thousands of pages of documents which need to be inspected, studied and then investigated in preparation of the defense of this case. Addresses and telephone numbers of individuals which were previously unknown have now been made available for the first time. There are many persons who also appear to be potential witnesses in the case, either for Mayer or against him, whose identity is revealed by the new documents. There are also file folders that

refer to persons or entities that Mayer was questioned about by the Grand Jury. The documents in these folders must be studied, the matters in them must be investigated, and, it seems likely that such persons must be interviewed. There is also much SEC registration material to be analyzed and investigated. From all of the foregoing, one fact clearly emerges; to wit, that there are many documents among the foregoing which are and have been in the possession of the prosecutor which are material to the defense of Mayer and that Mayer's requests to the prosecutors to make such materials available were reasonable. The mere fact that such materials have now been produced is the best evidence of the foregoing.

On Friday, October 29, 1976, my associate and I spent several hours inspecting those documents; he returned on Saturday, October 30, to continue the inspection for several additional hours, and again on Monday, November 1. The prosecutor states that photocopies of the many requested documents will not be available until later this week.

10. It will be impossible for myself and my associate to complete the necessary study and investigation of these documents, and the matters and persons to which they refer, prior to the scheduled commencement of this trial on November 8, 1976.

I estimate that a proper, thorough study and investigation of the documentation and matters involved would take at least 60-90 days. On the other hand, the Government has been investigating the case for several years. The undated affidavit of Assistant U.S. Attorney W. Cullen MacDonald, received by our office on May 10, 1976, states that the investigation was begun in August, 1972 and continued all during 1973, with the interviewing of witnesses and inspecting of documents. The affidavit of former Assistant U.S. Attorney Eugene Bannigan, verified May 14, 1976, also describes the government's efforts on this case as follows:

> Prior to filing its notice of readiness, the Government had extensively investigated this case. Thus, on information and belief, trial witnesses had been interviewed and documents assembled by Assistant United States Attorney W. Cullen MacDonald, who was in charge of the investigation of this case. The grand jury testimony in this case covers 213 transcript pages. Most of the nine witnesses who appeared before the grand jury were also interviewed by Assistant United States Attorney MacDonald. At the same time, documents that fill six file cabinet drawers were assembled during the investigation. In addition, this Office's investigation built upon a related investigation that was conducted by the Securities Exchange Commission ("SEC"). During the SEC investigation 34 witnesses testified under oath, giving 1664 pages of testimony, and introducing 70 exhibits into evidence.

I again harken back to the words of the Court at the hearing on May 14, 1976, in which the Court said:

> I have read that [the Bannigan affidavit] and it shows that the government, so far as the government's case, was exhaustively prepared; they had been preparing it for a period of years. But it shows that the government had done little or nothing to fulfill its obligations to provide discovery for the defendants, and I don't consider that the government is ready for trial until it has performed all of its obligations with respect to timely motions. (Transcript of Hearing on May 14, 1976, p.9)

11. I respectfully submit that the Plan was designed to prevent this very type of situation from arising. Although, as is shown in the accompanying memorandum of law, the cases say that a defendant need not show he has been prejudiced by the failure of the prosecutor to comply with Rule 5, it is clear from the facts presented here that defendant Mayer has been, and is, severely prejudiced by the failure of the original prosecutor to comply with Rule 5 in this case.

12. Since the prosecutor's letter, referred to above, was not received until October 21, 1976, and since the trial date is set for November 8, 1976, the time available for the Court's consideration of this matter is short. Therefore, this motion is brought on by the annexed Order to Show Cause for as early a return date as the Court in its discretion may fix.

13. No prior application for the relief requested herein has been made, except as hereinabove described in paragraph 7.

WHEREFORE, I respectfully request on behalf of defendant Mayer, that the Court grant this motion and dismiss the indictment as against defendant Mayer, for the failure of the prosecution to comply with Rule 5 of the Southern District Plan for Prompt Disposition of Criminal Cases.

Melvin D. Kraft

Melvin D. Kraft

Sworn to before me this 3rd
day of November, 1976

Edgar A. Smith

EDGAR A. SMITH
Notary Public, State of New York
No. 31-4618916
Qualified in New York County
Commission Expires March 30, 1977

May 5, 1975

W. Cullen MacDonald, Esq.
Assistant United States Attorney
United States Attorney's Office
Room 725
One St. Andrew's Plaza
New York, New York 10007

United States of America v. Ezrine,
et al. - 75 Cr. 363

Dear Mr. MacDonald:

Confirming our previous telephone conversation and the one we had this morning, you have indicated that the prosecution will supply to me, as defense counsel for Mr. Mayer, all the material to which Mr. Mayer is entitled without the necessity of formal motions.

As I indicated on the telephone, I have preliminarily reviewed the indictment and, based upon such review, there are certain items of particulars and information which I think would be helpful for me to set down on paper at this time.

The attached listing is not necessarily exhaustive as I hope to investigate the facts of the case more fully in the near future, and also to study the indictment and the relevant statutes involved in conjunction with such factual investigation.

In any event, I have prepared a preliminary schedule of items which I am enclosing with this letter.

As I understand it, you are expecting to take a short vacation in the near future, and that you will be in touch with me upon your return sometime in the

EXHIBIT A

latter part of next week.

With reference to the present May 14 deadline for motions, you have indicated that you will not object on grounds of timeliness to any motions that I might be advised to make after that date, in the event we are unable to resolve matters informally. Needless to say, I hope we can resolve all the matters involved informally so that no motions are necessary.

Thank you kindly for your courtesies and cooperation.

Very truly yours,

Melvin D. Kraft

MDK:ce
Enclosure

SCHEDULE OF ITEMS
ATTACHED TO LETTER OF M. D. KRAFT
TO W. C. MACDONALD, DATED MAY 5, 1975

(U.S.A. v. Ezrine, et al. - 75 Cr. 363)

A. Bill of Particulars (Fed. R. Crim. P. 7(f))

(1) The names of all co-conspirators not named in the indictment who are presently known to the Government and their addresses at the time of their alleged participation in the alleged conspiracy.

(2) Any overt acts not enumerated in the indictment, concerning which acts the Government intends to offer evidence upon the trial of the indictment herein.

(3) The manner in which defendant Mayer is alleged to have falsified purchases of Minute Approved Credit Plan, Inc. ("MACP") stock, and the dates on which such falsification is alleged to have occurred (Count I, Par. III(e)).

(4) The address of the place where the alleged meeting among defendants Mayer and Murray Lichtman and Sidney Stein on December 14, 1971 is alleged to have occurred (Count I, Par. IV (1)).

(5) The name of the person who allegedly gave $20,000 to defendant Mayer as alleged in the indictment, and the date, time, and place of this alleged payment (Count I, Par. IV (2)).

(6) The statements or omissions in the MACP offering circulars which are alleged to be false and fraudulent (Count I, Par. 4(3), Par. 10).

(7) The matters constituting the "fraudulent character of such sales", which defendant Mayer is alleged to have failed to disclose (Count I, Par. 4(4)).

(8) Any material facts allegedly falsified, concealed or covered up, the substance of any false, fictitious or fraudulent statements or representations

allegedly made, and any false writings and documents allegedly made and used which are not described in Paragraphs 3 and 4 of Count One, and concerning which the Government intends to offer evidence upon the trial.

(9) The substance of any untrue statements of material facts and omissions to state material facts allegedly made by which defendants allegedly obtained money and property, which are not described in Paragraphs 3 and 4 of Count One, and concerning which the Government intends to offer evidence upon the trial.

(10) The nature of the participation of defendant Mayer in the mail and telephone communications alleged in Counts Three through Eleven, inclusive, of the indictment.

(11) The names and addresses of any witnesses who testified before the grand jury whom the Government does not intend to call as witnesses upon the trial of this indictment.

(12) A copy of each and every matter named in Counts Two through Seventeen, inclusive, of the indictment, including any and all envelopes in which it is claimed such matter was mailed or received (U.S. v. Pilnick, 267 F. Supp. 791, S.D.N.Y. 1967).

B. Request for Discovery and Inspection (Fed. R. Crim. P. 16)

Please produce for inspection and copying the following matter:

(1) All written or recorded statements made by defendant Mayer to the United States Attorney's Office or to the Securities and Exchange Commission, within the possession, custody, or control of the Government.

(2) Recorded testimony of defendant Mayer before the grand jury; and that of the other witnesses who will testify for the Government at the trial.

(3) The MACP offering circulars filed on or about February 10, 1972 and June 12, 1972.

(4) The Fifth Post-effective Amended Notification under Regulation A, Form 1-A, filed on or about July 19, 1972, described in Count Eighteen of the indictment.

C. Request for Exculpatory Material (Brady v. Maryland)

Please produce all material in the files of the United States Attorney's Office, or any other Government agency, which constitutes evidence or refers to or may lead to the discovery of evidence which tends to exculpate defendant of the charges set forth in the indictment.

MDK:ce

MELVIN D. KRAFT, P.C.
LAW OFFICES
BAR BUILDING
36 WEST 44TH STREET
NEW YORK, N.Y. 10036

WILLIAM G. BECKER, JR.
OF COUNSEL

AREA CODE 212
575 7600
575 1017

May 13, 1975

Hon. Charles H. Tenney
United States District Judge
Southern District of New York
United States Courthouse - Room 1904
Foley Square
New York, New York 10007

United States of America v.
Ezrine, et al. - 75 Cr. 363

Dear Judge Tenney:

I represent defendant, Leon Mayer, in the above-entitled action, as to which I believe your docket reflects a May 14 deadline for all motions by defendant.

Mr. MacDonald has indicated informally that all pretrial discovery items and bill of particulars will be supplied by him voluntarily without the necessity of any motion, and I have confirmed this arrangement to him in writing by my letter of May 5, 1975, containing a schedule of requested items. I am enclosing a copy of this letter for Your Honor's convenience.

In view of my understanding with Mr. MacDonald I am respectfully requesting by this letter that Your Honor extend the deadline for motions until May 30, 1975, so that in the event any motions are necessary, I will have adequate time to prepare the motion papers and memorandum of law.

The last time I talked with Mr. MacDonald, about a week or so ago, he was then intending to complete a trial and then take a short vacation; hence, the reason

EXHIBIT B

for the request for additional time.

Respectfully yours,

Melvin D. Kraft

MDK:ce

cc: W. Cullen MacDonald, Esq.

MELVIN D. KRAFT, P.C.
LAW OFFICES
BAR BUILDING
36 WEST 44TH STREET
NEW YORK, N.Y. 10036

WILLIAM G. BECKER, JR.
OF COUNSEL

AREA CODE 212
575 7800
575 1017

August 29, 1975

Hon. Charles H. Tenney
District Judge
United States District Court
Southern District of New York
United States Courthouse
Room 1904
Foley Square
New York, New York 10007

Re: United States of America v.
Ezrine, et al. - 75 CR 363

Dear Judge Tenney:

I respectfully refer to my letter to your Honor dated June 30, 1975 and my Notice of Motion dated June 27, 1975 referred to therein.

As mentioned in my letter, Mr. MacDonald and I have conferred extensively and have resolved the issues in that portion of the motion relating to discovery, subject to a few outstanding items which Mr. MacDonald has stated that he will provide to me.

Mr. MacDonald has further stated that the prosecution has no items to produce, pursuant to item 3 of the motion.

Hence, the only portion of the motion which was not resolved is item No. 1 - for a bill of particulars, and as to that branch of the motion, I respectfully request that your Honor place it on your Motion Calendar for Friday, September 19, 1975 at 2:00 P.M. in Room 1904.

Respectfully yours,

Melvin D. Kraft

MELVIN D. KRAFT

MDK/wmb

EXHIBIT C

MEMORANDUM

DATE: 6/2/75

TO: MDK

FROM: CB

RE: U.S. v. Mayer

U. S. Attorney produced, 5/30, the following:

1. Grand Jury testimony of Leon Mayer only;
2. Exhibit 1 - MACP offering circular;
3. Exhibit 2 - Escrow Agreement, L.R. to hold $ .30/share to be released to Leon Mayer and Stein; $20,000 paid by M. Lichtman;
4. Exhibit 3 - A.C. Kluger Report to SEC;
5. Exhibit 6 - $6,000 check payable to M. Lichtman for Mayer;
6. Exhibit 7 - $10,000 note payable to Murray Lichtman by L. Mayer;
7. Exhibit 8 - $2500 note payable to M. Lichtman by L. Mayer;
8.-9. Transcripts (2) of SEC Proceedings 8/30/72 and 9/21/72 - In re MACP;
10. Notes - 8/30 - 1:50 p.m.;
11. Notes - 12/21/72 - 10:15 p.m.;
12. Notes - 12/27/72 - 10:15 p.m.;
13. Notes;
14. Notes of I. Eiferman;
15. Deposit Receipts from Central State Bank.

Note: Exhibit Nos. 4 & 5 to the Grand Jury Testimony of L. Mayer are missing.

BEST COPY AVAILABLE

EXHIBIT D

MEMORANDUM

TO: FILE

FROM: JAG

DATE: 5/11/76

SUBJECT: UNITED STATES v. MAYER

DOCUMENTS DISCLOSED BY GOVERNMENT --
TO BE PHOTOCOPIED (5/11/76)

1. Registration statement, MACP, 10/21/70.
2. Withdrawal of registration, 6/25/71.
3. Notification under Regulation 1-A, 6/25/71.
4. Amendment of Certificate of Incorporation of MACP, 6/16/71.
5. Amended notification under Regulation A, Form 1-A, 10/1/71.
6. Agreement between MACP and Redstone Securities, dated 6/21/71.
7. Third amended notification under Regulation A, Form 1-A.
8. Second post-effective amended notification under Regulation A, Form 1-A, 1/31/72.
9. Contract of 1/26/72, between A.C. Kluger and MACP.
10. Third post-effective amended notification under Regulation A, Form 1-A.
11. Fifth post-effective amended notification under Regulation-A, Form 1-A.
12. Prospectus issued by Benjamin Werner Co. of MACP, 1/13/69.
13. Amended Certificate of Incorporation of MACP.
14. Contract between MACP and Merchants Associated Credit Plan, dated 12/3/63.
15. Letter of 8/16/69 from Emanuel Quint to MACP [consent to registration].
16. Notification under Regulation 1-A.

EXHIBIT E

17. Contract between Redstone Securities and MACP, dated 6/21/71.

18. Consent of Emanuel Quint and MACP, dated 6/23/71.

19. Consent of Hill, Wynn, and Atlas, Esqs. dated 6/22/71.

20. Amended notification under Regulation Form 1-A, 10/1/71.

21. Second amended notification under Regulation A, dated 10/17/71.

22. Third amended notification dated 12/2/71.

23. Fourth post-effective amended notification under Regulation A, Form 1-A.

24. Fifth post-effective amended notification under Regulation A, Form 1-A of MACP.

25. Letter to Securities and Exchange Commission from Alan C. Kluger [post-closing] 7/72.

26. Miscellaneous correspondence to customers of MACP issues.

27. Phone charges on telephone number 631-0296 to Mrs. Hellerman, Vassalo, and Greco, approximately around the period 7/10/72.

28. Grand Jury Exhibit No. 1, consisting of various checks.

29. Stock transfer sheets, covering entire MACP issue.

United States Department of Justice

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
ONE ST. ANDREW'S PLAZA
NEW YORK, NEW YORK 10007

ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER
VTF:bmj

d-439

October 19, 1976

William M. Erlbaum, Esq.
Lyon and Erlbaum
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New York, New York 10007

Jerold D. Weissfeld, Esq.
160 Broadway
New York, New York 10038

Re: United States v. Ivan Ezrine, et al.,
75 Cr. 363 (CHC)

Gentlemen:

We have decided to make available for your inspection all documents obtained from third parties by the Securities and Exchange Commission and the Department of Justice in the investigations of Minute Approved Credit Plan, Inc., and Computer Microdata Corp., as well as the SEC registration files relating to Minute Approved Credit Plan, Inc. We are making all of this material available now in order to avoid delays at trial from any possible claims that certain items should have been produced in

EXHIBIT F

RECEIVED
OCT 21 1976
MELVIN D. KRAFT, P.C.

advance of trial but were not.

Certain documents have been segregated into a tentative trial exhibit folder. A list of those tentative trial exhibits dated October 18, 1976, is enclosed. We wish to emphasize that this list is tentative and that we expect additions, deletions, and exhibit numbers to change.

The remaining documents are organized in folders according to source as follows:

Minute Approved Credit Plan, Inc., Investigation

1. A.C. Kluger & Co.

   a. MACP -- Order Tickets
   b. MACP -- P & S Blotters
   c. MACP -- Confirmations (includes Alkon)
   d. MACP -- Receipt and Delivery Tickets
   e. MACP -- Customers Letters
   f. MACP -- Memoranda and Miscellaneous Correspondence
   g. MACP -- Bank Accounts
   h. MACP -- SEC Proceeding
   i. New Account Forms
   j. Miscellaneous P & S Blotters
   k. Cables
   l. Isaac Mayer -- Miscellaneous
   m. Leon Mayer -- Miscellaneous
   n. Alkon Industries
   o. Miscellaneous

2. Bandes & Axelrod
3. Bankers Trust Company
4. Blair, Elliot S.
5. Blinder, Robinson & Co., Inc.
6. Caesars Palace
7. Canadian Imperial Bank of Commerce
8. Central State Bank

9. Chemical Bank
10. Computravel
11. Continental Stock Transfer and Trust Company
12. Dunes Hotel and Country Club
13. Evans & Co., Inc.
14. Ezrine, Ivan
14A. Feinberg, Ira
15. Glass & Greenberg
16. Goral, Lawrence
17. Gotham Securities Corp.
18. Green & Co.
19. The Hayton Corporation
20. Hellerman, Michael
21. Hempstead Bank
22. Kogan, Nathan A.
23. Leon I. Radin & Co.
24. Lichtman, Joseph
25. Lichtman, Murray
26. Lipton, David
27. Lou G. Siegel, Inc.
28. Mayer, Isaac
29. Meyer, J. Edward, III
29A. Moyses, Charles
30. National Association of Securities Dealers, Inc.
31. National Bank of North America
32. New Jersey Bell Telephone Co.
33. New York City Police Department
34. New York Stock Exchange
35. New York Telephone Company
36. Park Securities, Inc.
37. Pineland State Bank
38. Quint, Marx & Chill
39. Rafalowicz, Leon
40. Ricciuti, V. Robert
41. Rich, Bruce A.
42. Riviera Hotel
43. Robert W. Steven Corp.
44. Shore National Bank
45. Spilky, Schmell & Billet
46. Willis E. Burnisde & Co., Inc.

Computer Microdata Corp. Investigation

1. Abraham & Co.
2. A.C. Kluger & Co.
3. Adler, Cyrus
4. Advest Co.
5. Argila, Anthony
6. Atlantic Services, Inc.
7. A.T. Scott & Co.
8. Ballow, Frank
9. Bloom, Aaron
10. Borg, Edward
11. Brent, Ruth
12. Breslow, Bernstein & Co., Inc.
13. Carlton-Cambridge

13A. C.B. Richard, Ellis & Co.

14. Chemical Bank
15. Cohen, Raymond
16. Computer Microdata Corp.
17. Contemporary Securities
18. Cowen & Co.
19. Defco Securities
20. Delaware Department of State
21. Dixon Dolce & Co.
22. E.J. Quinn & Co.
23. E. Lowitz & Co.
24. Evans & Co.
25. Ezrine, Ivan
26. Ezrine, Sarah
27. Feis Securities Co.
28. Ferkauf Roggen Incorporated
29. First National Bank of Toms River
30. Ginberg & Co., Inc.
32. G.L. Equities Corporation
33. Granite Securities
34. Grossman, Joan
35. Harris Upham & Co.
36. Hartunian, Aris
37. Hellerman, Michael
38. Josephthal & Co.
39. Kazan, Dean
40. Kirshner, Gellin & Co.
41. Kruge, Walter C.
42. Lent, George
43. Lichtman, Joseph
44. Llorens Associates, Inc.
45. Manufacturers Hanover Trust Co.

46. Merrill Lynch Pierce Fenner & Smith
47. Modular Wall Corp.
48. Morgan, Kennedy & Co., Inc.
49. National Association of Securities Dealers, Inc.
50. The National Bank of Mantua
51. National Bank of North America
52. National Quotation Bureau
53. New Jersey Department of State
54. New York Department of State
55. New York Telephone Co.
56. Paine Webber Jackson & Curtis
57. Park Securities, Inc.
58. Phoenix Securities
59. Pineland State Bank
60. P.J. Stanton, Inc.
61. Powers, Larry
62. R. Basile & Co., Inc.
63. R. Birchfield & Co.
64. Richman, Paul
65. Romano, Evelyn
66. Roodman, Harvey A.
67. Rosenblatt, Francine
68. Ross, Warren
69. Rothaus, Irving
70. Rothenberg, Paul
71. Saxon Securities Corp.
72. Scruggs, Grant
73. S.D. Lunt & Co.
74. Shore National Bank
75. Southwestern Bell Telephone Co.
76. Steiner Rouse
77. Stern, Joseph
78. Stern Lauer & Co.
79. Stoller, Eugene
80. Toledo, Jerry
81. Veith, Harold, Jr.
82. Weinreb, Samuel

SEC Registration Files

1. MACP -- Registration File No. 2-33466 (June 13, 1969)
2. MACP -- Registration File No. 2-38645 (Oct. 21, 1970)
3. MACP -- Registration File No. 24 NY-7365
4. MACP -- Docket File No. 24 NY-7365-1
5. MACP -- Correspondence File No. 24 NY-7365-3
6. MACP -- Regulation A Telephone Calls

d-439

William M. Erlbaum, Esq. -6-

You may telephone Joseph F. Lafferty at 791-9142 to make an appointment to inspect any of these materials.

Very truly yours,

ROBERT B. FISKE, JR.
United States Attorney

By: V. Thomas Fryman, Jr.
V. THOMAS FRYMAN, JR.
Assistant United States Attorney

Encl.
cc w/enc.: Hon. Charles H. Tenney
United States District Judge
Room 1904
United States Courthouse
Foley Square
New York, New York 10007

United States v. Ivan Ezrine, et al.
Trial Exhibits -- October 18, 1976
V. Thomas Fryman, Jr.

Exhibit	Date	Description	Witness
GX 1		Receipt signed by Ezrine for $5,000 received from Joseph Lichtman "on account of legal fees for Minute Credit".	
GX 2	6/13/69	Registration No. 2-33466, Form S-1 Registration Statement with Exhibits 1.1, 3.1, 3.2, 5.1, 13.2, 13.3, 13.4 and 13.5	
GX 3	8/14/69	Registration No. 2-33466, Amendment No. 1 to Form S-1 Registration Statement with Exhibits 4.1 and 6.	
GX 4	11/26/69	Registration No. 2-33466, Amendment No. 2 to Form S-1 Registration Statement	
GX 5	2/19/70	Registration No. 2-33466, Amendment No. 3 to Form S-1 Registration Statement	
GX 6	2/27/70	Registration No. 2-33466, Order Declaring Registration Statement Effective as of 2/10/70	
GX 7	8/24/70	Registration No. 2-33466, Order Consenting to the Withdrawal of the Registration Statement	
GX 8	3/6/70	Registration No. 2-33466, Final Prospectus filed with SEC	
GX 9	7/21/70	Letter from Emanuel B. Quint to SEC withdrawing Registration No. 2-33466	

Exhibit	Date	Description	Witness
GX 10	10/21/70	Registration No. 2-38645, Form S-1 Registration Statement with Exhibits 1.1, 3.1, 3.2, 4.1, 13.2, 13.3, 13.4 and 13.5.	
GX 11	6/25/71	Letter from Emanuel B. Quint to SEC withdrawing Registration No. 2-38645	
GX 12	6/25/71	File No. 24 NY-7365, Notification Under Regulation A Form 1A with Exhibits 1-13	
GX 13	10/1/71	File No. 24 NY-7365, Amended Notification Under Regulation A Form 1A with Amended Exhibit VII.	
GX 14	10/13/71	File No. 24 NY-7365, Second Amended Notification Under Regulation A Form 1-A with Amended Exhibit VII.	
GX 15	11/2/71 (11/16/71?)	File No. 24 NY-7365, Executed Exhibit 5	
GX 16	11/2/71	File No. 24 NY-7365, Offering Circular dated October 26, 1971	
GX 17	11/22/71	Check #961 for $750 drawn on account of Minute Approved Credit Plan Inc. At National Bank of North America payable to Ronald B. Zisk (D. 31.)	
GX 18	12/2/71	File No. 24 NY-7365, Third Amended Notification under Regulation A Form 1-A with Exhibits 1, 2, 3, 4, V, 6a, VI(b), VI(c), 7, 8, 9, IX(b), IX(c), 10, 11, 12, XII(b), XII(c) and 13	

Exhibit	Date	Description	Witness
GX 19	12/13/71	New York Telephone statement of call from 757-1759 in New York, N.Y., to 305-865-3860 in Miami, Florida.	
GX 20	12/14/71	Check #10845 for $75 drawn on account of Merchants Associated Credit Plan Inc. at National Bank of North America payable to Sylvia Gerstenzang (D. 31.)	
GX 21	1/6/72	Check #613 for $20,000 drawn on account of Joseph Lichtman and Florence Lichtman at National Bank of North America payable to Joseph Lichtman.	
GX 22	1/18/72	Receipt for $20,000 from M. Lichtman signed Rafalowicz.	
GX 23	1/31/72	File No. 24 NY-7365 Second Post-Effective Amended Notification under Regulation A Form 1-A with Exhibits 1, 2, 3, 4; V, 6a, VI(b), VI(c), 7, 8, 9, IX(b), IX(c), 10, 11, 12, XII(b), XII(c), and 13	
GX 24	2/10/72	File No. 24 NY-7365, Offering Circular as amended February 8, 1972	
GX 25	3/2/72	Letter from Emanuel B. Quint to Hill, Winn & Atlas, Glass & Greenberg, and Brotmann, Kornreich, Shore & Hecht	
GX 26	3/9/72	Check #936 for $14,200.85 drawn on account of Seed Capital Corporation at Bank of Commerce payable to First Investment Financial Corp.	
GX 27	3/10/72	File No. 24 NY-7365, Third Post-Effective Amended Notification under Regulation A Form 1-A with Exhibits	

Exhibit	Date	Dexcription	Witness
GX 28	3/15/72	Chemical Bank advice to First Investment Financial Corp. re $14,200.85 check from Seed Capital Corp.	
GX 29	3/15/72	Chemical Bank charge ticket to First Investment Financial Corp. re $14,200.85 check from Seed Capital Corp.	
GX 30	3/24/72	A.C. Kluger & Co. Confirmation to Morris Kaufman of purchase of 2,000 shares of MACP stock for $10,000	
GX 31	3/24/72	A.C. Kluger & Co. Confirmation to William Prinsell of purchase of 100 shares of MACP stock for $500	
GX 32	3/27/72	File No. 24 NY-7365, Offering Circular dated March 24, 1972	
GX 33	4/11/72	Letter from Emanuel B. Quint to Eliot Blair and Robert Berengarten	
GX 34		Check for $6,000 drawn on account of Isaac Mayer at Royal National Bank of New York payable to Murray Lichtman	
GX 35	4/19/72	Note from Issac Mayer for $2,500 payable to Murray Lichtman at Royal National Bank of New York.	
GX 36	4/26/72	Note from Issac Mayer for $10,000 payable to Murray Lichtman.	
GX 37	5/4/72	Memorandum by Leon Mayer	

Exhibit	Date	Description	Witness
GX 38	5/15/72	Check #715 for $1,000 drawn on account of Joseph Lichtman and Florence Lichtman at National Bank of North America payable to Morris Altberger.	
GX 39	5/17/72	Check #716 for $1,000 drawn on account of Joseph Lichtman and Florence Lichtman at National Bank of North America payable to Morris Altberger.	
GX 40	5/17/72	Check #11403 for $2,000 drawn on account of Merchants Associated Credit Plan Inc. at National Bank of North America payable to Morris Altberger	
GX 41	5/22/72	File No. 24 NY-7365 Fourth Post-Effective Amended Notification Under Regulation A Form 1-A with Exhibits	
GX 42	6/9/72	A. C. Kluger & Co. confirmation to Seymour Kurzer of purchase of 590 shares of MACP stock for $2,950	
GX 43	6/9/72	A. C. Kluger & Co. confirmation to Mrs. Jeanne Weinreb of purchase of 3,000 shares of MACP stock for $15,000	
GX 44	6/9/72	A.C. Kluger & Co. confirmation to Willis E. Burnside & Co. of purchase of 2,500 shares of MACP stock for $12,500	
GX 45	6/12/72	File No. 24 NY-7365, Offering Circular dated June 9, 1972	

Exhibit	Date	Description	Witness
GX 46	6/16/72	Letter from Emanuel B. Quint to Bob Berengarten	
GX 47	6/21/72	Letter from A. C. Kluger & Co. to Harold Achtson and enclosed check for $500	
GX 48	6/22/72	A. C. Kluger & Co. confirmation to Lujfa Bernstein of purchase of 200 shares of MACP stock for $1,000	
GX 49	6/22/72	A. C. Kluger & Co. confirmation to Paul Bernstein of purchase of 100 shares of MACP stock for $500	
GX 50	6/22/72	A. C. Kluger & Co. confirmation to Bessie Cumsky of purchase of 500 shares of MACP stock for $2,500	
GX 51	6/22/72	A. C. Kluger & Co. confirmation to Judah Feinerman of purchase of 1,000 shares of MACP stock for $5,000	
GX 52	6/22/72	A. C. Kluger & Co. confirmation to Maurice Friedman of purchase of 500 shares of MACP stock for $2,500	
GX 53	6/22/72	A.C. Kluger & Co. Confirmation to Nates Friesel of purchase of 500 shares of MACP stock for $2,500	
GX 54	6/22/72	A. C. Kluger & Co. confirmation to David Lipton of purchase of 1,000	

Exhibit	Date	Description	Witness
		shares of MACP stock for $5,000	
GX 55	6/22/72	A. C. Kluger & Co. confirmation to Susan Lowy of purchase of 100 shares of MACP stock for $500	
GX 56	6/22/72	A. C. Kluger & Co. confirmation to Alan Maroof of purchase of 250 shares of MACP stock for $1,250	
GX 57	6/22/72	A. C. Kluger & Co. confirmation to Ben Mellon of purchase of 1,000 shares of MACP stock for $5,000	
GX 58	6/22/72	A. C. Kluger & Co. confirmation to Ehsan Naissani of purchase of 360 shares of MACP stock for $1,800	
GX 59	6/22/72	A. C. Kluger & Co. confirmation to William Prinsell of purchase of 100 shares of MACP stock for $500	
GX 60	6/22/72	A. C. Kluger & Co. confirmation to Robert Reed of purchase of 200 shares of MACP stock for $1,000	
GX 61	6/22/72	A. C. Kluger & Co. confirmation to Leon Rafalowicz of purchase of 1,000 shares of MACP stock for $5,000	

VTF:sr
d-397

Exhibit	Date	Description	Witness
GX 62	6/22/72	A. C. Kluger & Co. confirmation to Max Rosenberg of purchase of 300 shares of MACP stock for $1,500	
GX 63	6/22/72	A. C. Kluger & Co. confirmation to Frieda Sapir of purchase of 200 shares of MACP stock for $1,000	
GX 64	6/22/72	A. C. Kluger & Co. confirmation to Emery & Judith Schiffer of purchase of 200 shares of MACP stock for $1,000	
GX 65	6/22/72	A. C. Kluger & Co. confirmation to Jack Shaw of purchase of 900 shares of MACP stock for $4,500	
GX 66	6/22/72	A. C. Kluger & Co. confirmation to Zalman Siegel of purchase of 100 shares of MACP stock for $500	
GX 67	6/22/72	A. C. Kluger & Co. confirmation to Victor Stein of purchase of 200 shares of MACP stock for $1,000	

Exhibit	Date	Description	Witness
GX 68	6/22/72	A. C. Kluger & Co. confirmation to Rabbi Hillel Wiener of purchase of 500 shares of MACP stock for $2,500	
GX 69	6/23/72	A. C. Kluger & Co. confirmation to David Adler of purchase of 200 shares of MACP stock for $1,000	
GX 70	6/23/72	A. C. Kluger & Co. confirmation to Szulen Freund of purchase of 100 shares of MACP stock for $500	
GX 71	6/23/72	A. C. Kluger & Co. confirmation to Frieda Fruchter of purchase of 2,000 shares of MACP stock for $10,000	
GX 72	6/23/72	A. C. Kluger & Co. confirmation to Morris Kaufman of purchase of 2,000 shares of MACP stock for $10,000	
GX 73	6/23/72	A. C. Kluger & Co. confirmation to Jeff Podell of purchase of 200 shares of MACP stock for $1,000	

Exhibit	Date	Description	Witness
GX 74.	6/23/72	A. C. Kluger & Co. confirmation to Morris Rand of purchase of 100 shares of MACP stock for $500	
GX 75	6/23/72	A. C. Kluger & Co. confirmation to Karl Szychter of purchase of 100 shares of MACP stock for $500	
GX 76	6/26/72	Check #1798 for $10,000 drawn on account of The First Investment Financial Corp. at Chemical Bank payable to cash	
GX 77	6/27/72	A. C. Kluger & Co. confirmation to Belle Wiener of purchase of 400 shares of MACP stock for $2,000	
GX 78	6/27/72	First National City Bank deposit ticket for checks totalling $15,000 to A.C. Kluger & Co. Special Underwriting acct.	
GX 79	6/30/72	A. C. Kluger & Co. confirmation to Jeff Podell of purchase of 200 shares of MACP stock for $1,000	
GX 80	6/30/72	A. C. Kluger & Co. confirmation to Sam Bergman of purchase of 200 shares of MACP stock for $1,000	

Exhibit	Date	Description	Witness
GX 81	6/30/72	A. C. Kluger & Co. confirmation to B. Fedder of purchase of 100 shares of MACP stock for $500	
GX 82	6/30/72	A. C. Kluger & Co. confirmation to Joseph Gross of purchase of 200 shares of MACP stock for $1,000	
GX 83	6/30/72	A. C. Kluger & Co. confirmation to Jack Izkovitz of purchase of 300 shares MACP stock for $1,500	
GX 84	6/30/72	New York Telephone statement of call from 631-0296 to 201-477-2364 in Pt. Pleasant, N. J.	
GX 85	7/2/72	A. C. Kluger & Co. confirmation to Eugne Serino of purchase of 1,000 shares MACP stock for $5,000.	
GX 86	7/3/72	A. C. Kluger & Co. confirmation to Darlene Agriss of purchase of 1,000 shares MACP stock for $5,000	
GX 87	7/3/72	A. C. Kluger & Co. confirmation to Barbara Bartsh of purchase of 1,500 shares MACP stock for $7,500	

VTF:sr
d-397

Exhibit	Date	Description	Witness
GX 88	7/3/72	A. C. Kluger & Co. confirmation to Carol Bartsch of purchase of 2,000 shares of MACP stock for $10,000	
GX 89	7/3/72	A. C. Kluger & Co. confirmation to Dores Bartsch of purchase of 1,000 shares of MACP stock for $5,000	
GX 90	7/3/72	A. C. Kluger & Co. confirmation to Richard Bartsch of purchase of 1,500 share of MACP stock for $7,500	
GX 91	7/3/72	A. C. Kluger & Co. confirmation to Philip J. Batiato of purchase of 1,500 shares of MACP stock for $7,500	
GX 92	7/3/72	A. C. Kluger & Co. confirmation to Henry J. Bressack of purchase of 2,000 shares of MACP stock for $10,000	
GX 93	7/3/72	A. C. Kluger & Co. confirmation to Ethel Cascella of purchase of 1,500 shares of MACP stock for $7,500	

VTF:sr
d-397

Exhibit	Date	Description	Witness
GX 94	7/3/72	A. C. Kluger & Co. confirmation to Fred De John of purchase of 1,000 shares of MACP stock for $5,000	
GX 95	7/3/72	A. C. Kluger & Co. confirmation to Equitable Small Business Investment Club of purchase of 2,000 shares of MACP stock for $10,000	
GX 96	7/3/72	A. C. Kluger & Co. confirmation to Joseph Farace of purchase of 1,000 shares of MACP stock for $5,000	
GX 97	7/3/7	A. C. Kluger & Co. confirmation to Alan Jasper of purchase of 1,000 shares of MACP stock for $5,000	
GX 98	7/3/72	A. C. Kluger & Co. confirmation to Philip Kaftol of purchase of 1,000 shares of MACP stock for $5,000	
GX 99	7/3/72	A. C. Kluger & Co. confirmation to Mel Klar of purchase of 500 shares of MACP stock for $2,500	

VTF:sr
d-397

Exhibit	Date	Description	Witness
GX 100	7/3/72	A. C. Kluger & Co. confirmation to Seymour Kurzer of purchase of 590 shares of MACP stock for $2,500 (?)	
GX 101	7/3/72	A. C. Kluger & Co. confirmation to Susan Lerma of purchase of 1,000 shares of MACP stock for $5,000	
GX 102	7/3/72	A. C. Kluger & Co. confirmation to Ira Lerman of purchase of 2,000 shares of MACP stock for $10,000	
GX 103	7/3/72	A. C. Kluger & Co. confirmation to David Lipton of purchase of 100 shares of MACP stock for $500	
GX 104	7/3/72	A. C. Kluger & Co. confirmation to Louis Markus of purchase of 500 shares of MACP stock for $2,500	
GX 105	7/3/72	A. C. Kluger & Co. confirmation to Teddy Obermeister of purchase of 500 shares of MACP stock for $2,500	

VTF:sr
d-397

Exhibit	Date	Description	Witness
GX 106	7/3/72	A. C. Kluger & Co. confirmation to Ann M. Prestia of purchase of 1,000 shares of MACP stock for $5,000	
GX 107	7/3/72	A. C. Kluger & Co. confirmation to Reuben Reich of purchase of 1,000 shares of MACP stock for $5,000	
GX 108	7/3/72	A. C. Kluger & Co. confirmation to Jack Roth of purchase of 500 shares of MACP stock for $2,500	
GX 109	7/3/72	A. C. Kluger & Co. confirmation to Leon Sacks of purchase of 500 shares of MACP stock for $2,500	
GX 110	7/3/72	A. C. Kluger & Co. confirmation to Samuel Wagshaw of purchase of 500 shares of MACP stock for $2,500	
GX 111	7/10/72	Check #11542 for $2,500 drawn on account of Merchants Associated Credit Plan Inc. at National Bank of North America payable to Irving Rothaus (D. 31).	

Exhibit	Date	Description	Witness
GX 112	7/11/72	New York Telephone statement of call from 631-0296 to 201-477-4455 in Pt. Pleasant, N.J.	
GX 113	7/11/72	Letter from George K. Lent to A. C. Kluger & Co.	
GX 114	7/11/72	Check #165 for $45,000 drawn on account of Minute Approved Credit Plan Inc. at National Bank of North America payable to Anthony Greco.	
GX 115	7/11/72	Check #1258 for $23,245.50 drawn on account of Park Securities, Inc. at Chelsea National Bank payable to George K. Lent.	
GX 116	7/12/72	Checking account deposit ticket for $45,000 check to account of Anthony Greco at Shore National Bank	
GX 117	7/12/72	Certified check voucher #223 for $11,000 check in favor of A. C. Kluger & Co. on account no. 200-787-1 of Anthony Greco.	

Exhibit	Date	Description	Witness
GX 118	7/12/72	Certified check for $11,000 drawn on account of Anthony Greco at Shore National Bank payable to A. C. Kluger & Co.	
GX 119	7/12/72	Certified check #513 for $30,000 drawn on account of Philomena Greco at Pineland State Bank payable to A. C. Kluger & Co.	
GX 120	7/12/72	Treasurer's Check #19761 for $10,000 drawn on Pineland State Bank payable to Lawrence Goral and Carol Goral	
GX 121	7/12/72	Treasurer's check #19763 for $45,000 drawn on Pineland State Bank payable to A. C. Kluger Co.	
GX 122	7/12/72	Check #166 for $26,500 drawn on account of Minute approved Credit Plan Inc. at National Bank of North America payable to Edward Vassallo	
GX 123	7/13/72	Letter from Lawrence Goral to A. C. Kluger and Company	
GX 124	7/13/72	Letter from Anthony Greco to A. C. Kluger and Company	
GX 125	7/14/72	Check #12175 for $5,000 drawn on account of Willis E. Burnside & Co., Inc. at The Bank of New York payable to A. C. Kluger & Co.	

Exhibit	Date	Description	Witness
GX 126	7/14/72	Check #164 for $15,000 drawn on account of Minute Approved Credit Plan Inc. at National Bank of North America payable to Sam Weinreb (original and Weinreb copy)	
GX 127	7/14/72	Chemical Bank deposit ticket for $15,000 check to account of Crystal Chemical Corp.	
GX 128	7/14/72	Official check #8704 for $754.50 drawn on Chemical Bank payable to A. C. Kluger & Co.	
GX 129	7/14/72	Requisition for official check #8705 for $15,000 to the order of A. C. Kluger & Co. drawn for account of Crystal Chemical Corp.	
GX 130	7/14/72	Chemical Bank Charge ticket to account of Crystal Chemical Corp. for official check #8705 for $15,000 payable to A. C. Kluger & Co. (2 copies)	
GX 131	7/14/72	Official check #8705 for $15,000 drawn on Chemical Bank payable to A. C. Kluger & Co.	
GX 132	7/14/72	First National City Bank deposit ticket for checks totalling $67,500 to A. C. Kluger & Co. Special Underwriting Co.	

Exhibit	Date	Description	Witness
GX 133	7/14/72	First National City Bank deposit ticket for checks totalling $83,500 to A. C. Kluger & Co. Special Underwriting Acct.	
GX 134	7/14/72	New Account Information for Darlene Agriss	
GX 135	7/14/72	New Account Information for Barbara Bartsch	
GX 136	7/14/72	New Account Information for Carol Bartsch	
GX 137	7/14/72	New Account Information for Dores Bartsch	
GX 138	7/14/72	New Account Information for Richard Bartsch	
GX 139	7/14/72	New Account Information for Philip J. Batiato	
GX 140	_____	New Account Information for Henry J. Bressack	
GX 141	_____	New Account Information for Ethel Cassella	
GX 142	_____	New Account Information for Fred De John	
GX 143	_____	New Account Information for Equitable Small Business Investment Company	
GX 144	_____	New Account Information for Joseph Farace	
GX 145		[Omitted]	

VTF:sr
d-397

Exhibit	Date	Description	Witness
GX 146	____	New Account Information for Allan Jasper	
GX 147	____	New Account Information for Philip Kaftol	
GX 148	____	New Account Information for Ira Lerman	
GX 149	____	New Account Information for Susan Lerman	
GX 150	____	New Account Information for William M. Prestia	
GX 151	____	New Account Information for Reuben Reich	
GX 152	____	New Account Information for Eugene Serino	
GX 153	____	New Account Information for Jeanne Weinreb	
GX 154	7/ /72	Telex from Mike Rich to Alan C. Kluger	
GX 155	____	Minute Approved Final Distribution Records	
GX 156	____	Certified Check #137 for $178,780 drawn on A. C. Kluger & Co. Underwriting Account at First National City Bank payable to Minute Approved Credit Plan, Inc.	
GX 157	7/17/72	Certified check #5395 for $36,220 drawn on account of A. C. Kluger & Co. at First National City Bank payable to Minute Approved Credit Plan, Inc.	

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Exhibit	Date	Description	Witness
GX 158	7/ 72	Telex from Mike Rich to Allan Kluger	
GX 159	7/17/72	Letter from Michael A. Rich to Michael Goldberg	
GX 160	7/18/72	Letter from Michael A. Rich to Michael Goldberg	
GX 161	7/18/72	Check #176 for $45,000 drawn on account of Minute Approved Credit Plan Inc. at National Bank of North America payable to National Bank of North America	
GX 162	7/18/72	Check #177 for $45,000 drawn on account of Minute Approved Credit Plan Inc. at National Bank of North America payable to National Bank of North America	
GX 163	7/18/72	Cashier's check #1768564 for $45,000 drawn on National Bank of North America payable to Minute Approved Credit Plan Inc. and endorsed to Lawrence Goral	
GX 164	7/18/72	Cashier's check #1768585 for $45,000 drawn on National Bank of North America payable to Minute Approved Credit Plan Inc. and endorsed to Tony Greco.	
GX 165	7/18/72	Certified check #178 for $20,000 drawn on account of Minute Approved Credit Plan Inc. at National Bank of North America payable to George Lent.	

Exhibit	Date	Description	Witness
GX 166	7/18/72	Certified check #179 for $10,000 drawn on account of Minute Approved Credit Plan Inc., at National Bank of North America payable to Larry Goldstein and re-deposited to Minute Approved Credit Plan Inc. account.	
GX 167	7/18/72	Certified check #180 for $20,000 drawn on account of Minute Approved Credit Plan Inc. at National Bank of North America payable to Irwin Schlacter	
GX 168	7/18/72	Certified check #181 for $15,000 drawn on account of Minute Approved Credit Plan Inc. at National Bank of North America payable to Jerry Schwartz.	
GX 169	7/19/72	File No. 24 NY-7365 Fifth Post-Effective Amended Notification Under Regulation A Form 1-A of Minute Approved Credit Plan, Inc.	
GX 170	7/19/72	Check #740 for $6,000 drawn on account of Joseph Lichtman and Florence Lichtman at National Bank of North America payable to Joseph Lichtman.	
GX 171	7/19/72	Charge ticket of Shore National Bank to account of Anthony Greco for $45,000.46 for check of Minute Approved Credit Plan drawn on National Bank of North America and telephone cost.	

Exhibit	Date	Description	Witness
GX 172	7/19/72	Checking account deposit ticket for $45,000 check to account of Anthony Greco at Shore National Bank	
GX 173	7/20/74	Franklin National Bank deposit ticket for $20,000, $20,000 and $15,000 checks to Lauritano & Schlacter Special account.	
GX 174	7/20/72	Certified check #1548 for $63,846.48 drawn on account of Breslow, Bernstein & Co., Inc. at Underwriters Bank payable to Dean Kezan.	
GX 175	7/21/72	Certified check #1609 for $46,677.33 drawn on account of Breslow, Bernstein & Co., Inc. at Underwriters Bank payable to Evelyn Romano	
GX 176	7/24/74	Franklin National Bank deposit ticket for $46,677.33 and $63,846.48 checks to Lauritano & Schlacter Special account.	
GX 177	7/24/72	Universal Credit Card Charge Form for tickets #999:858, 999:859, 999:860, 999:861, in amount of $1,041 charged to Joseph Lichtman	

Exhibit	Date	Description	Witness
GX 178	7/24/72	Passenger ticket and baggage check #999:858 for Mrs. M. Hellerman	
GX 179	7/24/72	Passenger ticket and baggage check # 999:859 for Mrs. M. Hellerman	
GX 180	7/24/72	Passenger ticket and baggage check #999:860 for Mrs. J. Hellerman	
GX 181	7/24/72	Check #747 for $1,600 drawn on account of Joseph Lichtman and Florence Lichtman at National Bank of North America payable to cash	
GX 182	7/24/72	Check #1136 for $10,000 drawn on account of Lauriteno & Schlacter Special at Franklin National Bank payable to Ivan Ezrine	
GX 183	7/24/72	Check #1137 for $7,000 drawn on account of Lauritano & Schlacter Special at Franklin National Bank payable to Computravel Enterprises Inc.	
GX 184	7/24/72	Check #1139 for $2,300 drawn on account of Lauritano & Schlacter Special at Franklin National Bank payable to Computravel Enterprises Inc.	

Exhibit	Date	Description	Witness
GX 185	7/25/72	Check #1140 for $6,500 drawn on account of Lauritano & Schlacter Special at Franklin National Bank payable to Laurance Amato	
GX 186	7/25/72	Check #1141 for $25,000 drawn on account of Lauritano & Schlacter Special at Franklin National Bank payable to Joel Goldfarb	
GX 187	7/25/72	Check #1142 for $3,000 drawn on account of Lauritano & Schlacter Special at Franklin National Bank payable to Vincent Broderick	
GX 188	7/26/72	Certified check #1639 for $45,078.21 drawn on account of Breslow, Bernstein & Co. at Underwriters Bank payable to Ernie Schlacter	
GX 189	7/26/72	Check #1144 for $6,000 drawn on account of Lauritano & Schlacter Special at Franklin National Bank payable to Albert Schwartz	
GX 190	7/27/72	Check #1145 for $46,677.33 drawn on account of Lauritano & Schlacter Special at Franklin National Bank payable to Evelyn Romano	
GX 191	7/27/72	Check #1146 for $59,046.48 drawn on account of Lauritano & Schlacter Special at Franklin National Bank payable to Dean Kezan.	

Exhibit	Date	Description	Witness
GX 192	7/27/72	Check #1676 for $13,608.62 drawn on account of Breslow, Bernstein & Co., Inc. at Underwriters Bank payable to Ernie Schlacter	
GX 193	7/28/72	Check #1702 for $30,000 drawn on account of Breslow, Bernstein & Co. Inc., at Underwriters Bank payable to Ernie Schlacter.	
GX 194	7/28/74	Universal Credit Card Charge Form for ticket #698:073 in amount of $980 charged to Joseph Lichtman	
GX 195	7/28/74	Universal Credit Card Charge Form for ticket #698:074 in amount of $245 charged to Joseph Lichtman	
GX 196	7/28/72	Miscellaneous charges order #698:073 for air transportation for Mr. J. Lichtman, Mrs. J. Grossman, Mr. and Mrs. E. Vassallo	
GX 197	7/28/74	Miscellaneous charges order # 698:074 for air transportation for Mr. M. Hellerman	
GX 198	7/30/72	American Express Charge record invoice #189944 for Hertz Corp. bill #3119656-5 in amount of $71.61 charged to Joseph Lichtman	

Exhibit	Date	Description	Witness
GX 199	7/30/72	Hertz Corp. rental agreement #3119656-5	
GX 200	7/30(28)/72	American Express Charge record invoice #505145 for Doral Bch Hotel in amount of $646.87 charged to Joseph Lichtman	
GX 201	7/30/72	Doral-on-the-Ocean bill for Miss E. Mann for $132.70	
GX 202	7/30/72	Doral-on-the-Ocean bill for Mr. J. Lichtman for $514.17	
GX 203	7/30/72	American Express Charge record invoice #742836 for Doral Bch Hotel in amount of $1,663.05 charged to Joseph Lichtman	
GX 204	7/30/72	Doral-on-the-Ocean bill for Mr. and Mrs. E. Vassallo for $707.55	
GX 205	7/30/72	Doral-on-the-Ocean bill for Mr. M. Hellerman for $957.50	
GX 206	7/31/72	Franklin National Bank statement for Lauritano & Schlacter Special accounts	

Exhibit	Date	Description	Witness
GX 207	8/1/72	Check #1743 for $6,543.49 drawn on account of Breslow, Bernstein & Co. Inc. at Underwriters Bank payable to Ernie Schlacter	
GX 208	8/1/72	Letter from Michael A. Rich to Darlene Agriss	
GX 209	8/1/72	Letter from Michael A. Rich to Barbara Bartsch	
GX 210	8/1/72	Letter from Michael A. Rich to Carol Bartsch	
GX 211	8/1/72	Letter from Michael A. Rich to Dores Bartsch	
GX 212	8/1/72	Letter from Michael A. Rich to Richard Bartsch	
GX 213	8/1/72	Letter from Michael A. Rich to Phillip J. Batiato	
GX 214	8/ /72	Envelope addressed to Philip J. Batiato with notation, moved, left no address	
GX 215	8/1/72	Letter from Michael A. Rich to Lujfa Bernstein	
GX 216	8/1/72	Letter from Michael A. Rich to Paul Bernstein	
GX 217	8/1/72	Letter from Michael A. Rich to Henry J. Bressack	

Exhibit	Date	Description	Witness
GX 218	8/1/72	Letter from Michael A. Rich to Ethel Cascella	
GX 219	8/1/72	Letter from Michael A. Rich to Fred De John	
GX 220	8/1/72	Letter from Michael A. Rich to Marcel Sand Diamond	
GX 221	8/1/72	Letter from Michael A. Rich to Equitable Small Business Investment Club	
GX 222	8/1/72	Letter from Michael A. Rich to Joseph Farace	
GX 223	8/1/72	Letter from Michael A. Rich to Frieda Fruchter	
GX 224	8/1/72	Letter from Michael A. Rich to Alan Jasper	
GX 225	8/1/72	Letter from Michael A. Rich to Philip Kaftol	
GX 226	8/1/72	Letter from Michael A. Rich to Morris Kaufman	
GX 227	8/1/72	Letter from Michael A. Rich to Susan Lerman	
GX 228	8/1/72	Letter from Michael A. Rich to Ira Lerman	
GX 229	8/1/72	Letter from Michael A. Rich to Ben Mellon	

Exhibit	Date	Description	Witness
GX 230	8/1/72	Letter from Michael A. Rich to Jeff Podell	
GX 231	8/1/72	Letter from Michael A. Rich to Ann M. Prestia	
GX 232	8/1/72	Letter from Michael A. Rich to William Prinsell	
GX 233	8/1/72	Letter from Michael A. Rich to Leon Rafalowicz	
GX 234	8/1/72	Letter from Michael A. Rich to Reuben Reich	
GX 235	8/1/72	Letter from Michael A. Rich to Eugene Serino	
GX 236	8/1/72	Letter from Michael A. Rich to Victor Stein	
GX 237	8/1/72	Letter from Michael A. Rich to Belle Wiener	
GX 238	8/1/72	Letter from Michael A. Rich to Joanne Weinreb	
GX 239	8/7/72	Letter from Emanuel B. Quint to Mr. & Mrs. Leon Mayer	
GX 240	8/7/72	Mortgage between 145 Jefferson Ave. Corp. and Sarah Mayer	

Exhibit	Date	Description	Witness
GX 241	8/7/72	Mortgage note from 145 Jefferson Ave. Corp. to Sarah Mayer	
GX 242	____	Chemical Bank New York Trust Company money wrappers totalling $25,000	
GX 243	8/8/72	Central State Bank receipt for $6,000 deposit	
GX 244	8/8/72	Central State Bank receipt for $3,980 deposit	
GX 245	8/8/72	Check #1276 for $10,000 drawn on account of Minute Approved Credit Plan Inc. at Bankers Trust Company payable to Bankers Trust Co.	
GX 246	8/8/72	Check for $6,000 drawn on account of Murray Lichtman at National Bank of North America payable to Mr. Leon Mayer (unpaid for insufficient funds)	
GX 247	8/9/72	Central State Bank memorandum of receipt of $20 bill	
GX 248	8/9/72	Letter from Michael A. Rich to Continental Stock Transfer Co.	
GX 249	8/9/72	A. C. Kluger & Co. receipt for 500 MACP shares from Bessie Cumsky	
GX 250	8/9/72	A. C. Kluger & Co. receipt for 1,000 MACP shares from Judah Feinerman	

Exhibit	Date	Description	Witness
GX 251	8/9/72	A. C. Kluger & Co. receipt for 100 MACP shares from Szulen Freund	
GX 252	8/9/72	A. C. Kluger & Co. receipt for 500 MACP shares from M. Friedman	
GX 253	8/9/72	A. C. Kluger & Co. receipt for 500 MACP shares from Mates Friesel	
GX 254	8/9/72	A. C. Kluger & Co. receipt for 100 MACP shares from Susan Lowy	
GX 255	8/9/72	A. C. Kluger & Co. receipt for 250 MACP shares from A. Maroof	
GX 256	8/9/72	A. C. Kluger & Co. receipt for 360 MACP shares from E. Naissani	
GX 257	8/9/72	A. C. Kluger & Co. Receipt for 100 MACP shares from M. Rand	
GX 258	8/9/72	A. C. Kluger & Co. receipt for 300 MACP shares from M. Rosenberg	
GX 259	8/9/72	A. C. Kluger & Co. receipt for 200 MACP shares from I. J. Schiffer	
GX 260	8/9/72	A. C. Kluger & Co. receipt for 900 MACP shares from J. Shaw	

Exhibit	Date	Description	Witness
GX 261	8/9/72	A. C. Kluger & Co. receipt for 100 MACP shares from Z. Siegel	
GX 262	8/9/72	A. C. Kluger & Co. receipt for 100 MACP shares from K. Szychter	
GX 263	8/9/72	A. C. Kluger & Co. receipt for 500 MACP shares from H. Weiner	
GX 264	8/9/72	A. C. Kluger & Co. delivery ticket for 500 MACP shares to Kordich, Victor & Neufeld for a/c David Lipton	
GX 265	8/10/72	MACP stock certificate # NU68 (Belle Weiner)	
GX 266	8/10/72	MACP stock certificate # _____ (Lujfa Bernstein)	
GX 267	8/10/72	MACP stock certificate #NU73 (Ira Lerman)	
GX 268	8/10/72	MACP stock certificate #NU74 (Susan Lerma)	
GX 269	8/ /72	Receipt for certified mail # 192231 to Darlene Agriss	
GX 270	8/ /72	Receipt for Certified Mail # 192224 to Barbara Bartsch	

Exhibit	Date	Description	Witness
GX 271	8/ /72	Receipt for Certified Mail # 192225 to Carol Bartsch	
GX 272	8/ /72	Receipt for Certified Mail # 192226 to Dores Bartsch	
GX 273	8/ /72	Receipt for Certified Mail # 192227 to Richard Bartsch	
GX 274	8/ /72	Receipt for Certified Mail # 192232 to Philip J. Batiato	
GX 275	8/ /72	Receipt for Certified Mail # 192213 to Lujfa Bernstein	
GX 276	8/ /72	Receipt for Certified Mail # 192214 to Paul Bernstein	
GX 277	8/ /72	Receipt for Certified Mail # 192233 to Henry J. Bressack	
GX 278	8/ /72	Receipt for Certified Mail # 192234 to Ethel Cascella	
GX 279	8/ /72	Receipt for Certified Mail # 192165 to Fred De John	
GX 280	8/ /72	Receipt for Certified Mail # 192235 to Fred De John	
GX 281	8/1/72	Receipt for Certified Mail # 192217 to Marcel Sand Diamond	
GX 282	8/ /72	Receipt for Certified Mail # 192230 to Equitable Small Business Investment Club	
GX 283	8/ /72	Receipt for Certified Mail # 192236 to Joseph Farace	

Exhibit	Date	Description	Witness
GX 284	8/ /72	Receipt for Certified Mail # 192215 to Frieda Fruchter	
GX 285	8/ /72	Receipt for Certified Mail # 192237 to Alan Jasper	
GX 286	8/ /72	Receipt for Certified Mail # 192242 to Philip Kaftol	
GX 287	8/ /72	Receipt for Certified Mail # 192216 to Morris Kaufman	
GX 288	8/ /72	Receipt for Certified Mail # 192229 to Susan Lerma	
GX 289	8/ /72	Receipt for Certified Mail # 192228 to Ira Lerman	
GX 290	8/ /72	Receipt for Certified Mail # 192218 to Ben Mellon	
GX 291	8/ /72	Receipt for Certified Mail # 192219 to Jeff Podell	
GX 292	8/ /72	Receipt for Certified Mail # 192238 to Ann M. Prestia	
GX 293	8/ /72	Receipt for Certified Mail # 192220 to William Prinsell	
GX 294	8/ /72	Receipt for Certified Mail # 192244 to Leon Rafalowicz	
GX 295	8/ / 72	Receipt for Certified Mail # 192239 to Reuben Reich	

Exhibit	Date	Description	Witness
GX 296	8/ /72	Receipt for Certified Mail # 192240 to Eugene Serino	
GX 297	8/ /72	Receipt for Certified Mail # 192222 to Victor Stein	
GX 298	8/ /72	Receipt for Certified Mail # 192223 to Belle Wiener	
GX 299	8/ /72	Receipt for Certified Mail # 192241 to Jeanne Weinreb	
GX 300	8/12/72	Return Receipt for Certified Mail # 192225 signed Carla Seneca	
GX 301	8/12/72	Return Receipt for Certified Mail # 192226 signed Carla Seneca	
GX 302	8/12/72	Return Receipt for Certified Mail # 192214 signed Sadie Levine	
GX 303	8/12/72	Return Receipt for Certified Mail # 192228 signed Ira Lerman	
GX 304	8/12/72	Return Receipt for Certified Mail # 192220 signed T. Prinsell	
GX 305	8/12/72	Return Receipt for Certified Mail # 192222 signed Eileen Stein	

Exhibit	Date	Description	Witness
GX 306	8/14/72	Return Receipt for Certified Mail # 192231 signed Darlene Agriss	
GX 307	8/14/72	Return Receipt for Certified Mail # 192227 signed Barbara L. Bartsch	
GX 308	8/14/72	Return Receipt for Certified Mail # 192213 signed L. Bernstein	
GX 309	8/14/72	Return Receipt for Certified Mail # 192233 signed Joan Bressack for Henry Bressack	
GX 310	8/14/71	Return Receipt for Certified Mail # 192236 signed Joseph Farace	
GX 311	8/14/71	Return Receipt for Certified Mail # 192215 signed Frieda Fruchter	
GX 312	8/14/72	Return Receipt for Certified Mail # 192237 signed A. E. Jasper	
GX 313	8/14/72	Return Receipt for Certified Mail # 192216 signed Kaufman	
GX 314	8/14/72	Return Receipt for Certified Mail # 192229 signed Susan Lerman	

Exhibit	Date	Description	Witness
GX 315	8/14/72	Return Receipt for Certified Mail # 192219 signed (?) for J. Podell	
GX 316	8/14/72	Return Receipt for Certified Mail # 192238 signed Alan Prestia	
GX 317	8/14/72	Return Receipt for Certified Mail # 192240 signed E. Serino	
GX 318	8/14/72	New York Telephone statement of call from 922-3644 to 201-477-1300 in Pt. Pleasant, N.J.	
GX 319	8/15/72	Return Receipt for Certified Mail # 192234 signed Ethel Cascella	
GX 320	8/15/72	Return Receipt for Certified Mail # 192242 signed Philip Kaftol	
GX 321	8/15/72	Return Receipt for Certified Mail 192218 signed Ben Mellen (?)	
GX 322	8/15/72	Return Receipt for Certified Mail # 192239 signed Reuben Reich	
GX 323	8/17/72	Return Receipt for Certified Mail # 192217 signed Allan Sand	

Exhibit	Date	Description	Witness
GX 324	8/19/72	Return Receipt for Certified Mail # 192224 signed Hazel Pinta	
GX 325	8/22/72	Return Receipt for Certified Mail # 192244 signed Leon Rafalowicz	
GX 326	8/24/72	New Jersey Bell Telephone Co. statement of call from 201-477-4455 to 212-867-4986 in New York, N.Y.	
GX 327	9/11/72	Return Receipt for Certified Mail # 192223 signed A. C. Kluger & Co.	
GX 328	/ /72	Certified Mail envelope # 192216 addressed to Morris Kaufman	
GX 329	/ /72	Certified Mail envelope #192223 addressed to Belle Wiener with notation, unclaimed	
GX 330	/ /72	Certified Mail envelope # 192232 addressed to Phillip J. Bat[illegible]iato with notation, moved, left no address	
GX 331	/ /72	Certified Mail envelope # 192241 addressed to Jeanne Weinreb with notation, unclaimed	

U.S. DISTRICT COURT
FILED
NOV 10 1976
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA

-against-

IVAN ALAN EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, LEON MAYER, EDWARD VASSALLO, LAWRENCE GORAL, and ANTHONY L. GRECO, JR.,

Defendants.

----------x

75 Cr. 363 (CHT)

REPLY AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MELVIN D. KRAFT, being duly sworn, deposes and says:

1. I am counsel for defendant Leon Mayer in this action and I submit this affidavit in reply to the affidavit of Assistant United States Attorney, V. Thomas Fryman, Jr., sworn to the 8th day of November, 1976 and in support of the motion of defendant Mayer brought on by order to show cause dated November 3, 1976 seeking dismissal of the indictment, as against defendant Mayer, on the ground that the prosecutor was not actually ready for trial within six months from the date of the filing of the indictment.

2. This affidavit is submitted for the limited purpose of clearly establishing on the record those matters of fact which are pertinent to this motion. The first of these matters is the "materiality" to the preparation of Mayer's defense within the meaning of Rule 16 of the Federal Rules of

Criminal Procedure (as that Rule was in effect prior to December, 1975) of the documents first made available to defendant Mayer by the prosecutor's letter of October 19, 1976 (Exhibit F annexed to the moving affidavit of Melvin D. Kraft, sworn to the 3rd day of November 1976). It is the contention of defendant Mayer on this motion, set forth in paragraph nine of the moving affidavit herein of Melvin D. Kraft sworn to the 3rd day of November, 1976,

> that there are many documents among the foregoing [on the lists of documents included in Exhibit F] which are and have been in the possession of the prosecutor which are material to the defense of Mayer and that Mayer's requests to the prosecutors to make such materials available were reasonable. (Emphasis added)

The opposition papers on this motion make no attempt to dispute the above-quoted contention. They skirt this issue by talking about the new broadened Rule 16 and the scope of the documentation provided, but do not deny (and cannot deny) that there are at least hundreds of documents among those now provided for the first time which are material to the preparation of Mayer's defense. To illustrate this point I have annexed hereto as "Exhibit G," a schedule of persons referred to or asked about in defendant Mayer's testimony before the Grand Jury, the pages of the transcript at which such persons are referred to and the documentation made available by the prosecutor's October 19th and October 28th letters which concerns these persons.

Thus for purposes of this motion it must be taken as established on the record that the great bulk of the documents first made available by the prosecutor's October 19, 1976 letter are, as has been asserted in the moving affidavit herein, both "material" to the preparation of defendant Mayer's defense and "reasonable" as the subject of a request or motion under former Rule 16 of the Federal Rules of Criminal Procedure. If there should be any issue as to those characteristics of the newly offered material I respectfully request an evidentiary hearing for the purpose of putting into evidence the many hundreds of pages of documentation to which Mayer was entitled under Rule 16(b) as formerly worded.

3. The only issue sought to be raised by the prosecutor's opposition papers to this motion is whether the requests which were made by me on behalf of defendant Mayer for the production and inspection of documents pursuant to Rule 16 prior to the expiration of the six-month period following Mayer's indictment, included a request for production of the material made available for the first time by the prosecutor's October 19th letter. The utterly bankrupt position of the prosecutor on this issue is evidenced by his failure to raise this contention either in his affidavit or the affidavit of Mr. MacDonald with whom I had the dealings in question here.

As has already been indicated, but perhaps not clearly shown in the moving affidavit herein, and as will be further shown below, a formal motion was filed on behalf of defendant

Mayer on June 27, 1975 requesting, in part, production of all the documentation and materials to which Mayer was entitled under Rule 16. That part of the motion was subsequently withdrawn upon the representation of Mr. MacDonald that all such documents (except two items) had in fact been provided.

To clarify the foregoing, I respectfully wish to point out that the June 27, 1975 notice of motion of defendant Mayer, (a copy of which is annexed hereto, with the moving affidavit of Melvin D. Kraft sworn to the 27th day of June, 1975, as "Exhibit H") in its second numbered paragraph seeks an order:

> "directing the production of those documents described in the accompanying affidavit of Melvin D. Kraft, pursuant to Rule 16 of the Federal Rules of Criminal Procedure;"

Contrary to the representations made at page 3 of the prosecutor's undated Memorandum in Opposition to the instant motion, my moving affidavit in support of Mayer's motion for a Rule 16 order did not limit the documents as to which an order for production was sought to the documents listed in the appendix to my May 5, 1975 letter to Mr. MacDonald (Exhibit A annexed to the moving affidavit on the instant motion). My moving affidavit on Mayer's motion for documentary production pursuant to Rule 16, (Exhibit H annexed hereto) described the requested documentation in the following terms;

> 4. ...on May 5, 1975 I sent a letter to the Assistant United States Attorney [Mr. MacDonald] requesting: ... certain documents referred to in the indictment; and exculpatory material under Brady v. Maryland.

A copy of that letter is annexed hereto as Exhibit A and respectfully incorporated by reference herein. (Emphasis supplied)

5. Several weeks later, the prosecutor herein, Mr. MacDonald, sent me some of the above material .... Mr. MacDonald also stated that other unspecified Rule 16(b) material was available for inspection at his office. Due to scheduling problems on the part of both Mr. MacDonald and myself, such inspection was not arranged until yesterday, June 26, 1975. Although inspection was begun it was not completed. (Emphasis supplied)

6. Thus while some discovery has been granted certain of the discovery materials requested are yet to be supplied. (Emphasis supplied)

7. Only after the discovery materials and bill of particulars described above are received, studied and investigated further will I be in a position, as counsel for defendant Mayer, to determine what other pre-trial motions ... should be made and whether the facts support the making of such motions. (Emphasis supplied)

It is thus clear on the record of this action that the notice of motion of defendant Mayer, in seeking an order directing the production of "those documents described in the accompanying affidavit of Melvin D. Kraft" was seeking production not only of the documents enumerated in the appendix to my May 5, 1975 letter to Mr. MacDonald (Exhibit A to the moving affidavit herein), but also production of that "other unspecified Rule 16(b) material" which Mr. MacDonald had stated "was available for inspection at his office" which constituted, as I understood it, all the documentary material to which Mayer was entitled under Rule 16.

That representation of Mr. MacDonald as to the existence of "other unspecified Rule 16 (b) material" and his promise to make all of such material available for inspection, as sought in defendant Mayer's motion, was the sole reason for my August 25th letter to the Court (Exhibit C to the moving affidavit herein), indicating my decision in reliance on Mr. MacDonald's representations, not to press the Rule 16 (b) portion of defendant Mayer's June 27th, 1975 motion.

The attempt of the prosecutor at page 3 of his undated Memorandum in Opposition to the instant motion, to portray the scope of defendant Mayer's requests for Rule 16 (b) discovery as limited to the list of documents appended to my May 5, 1975 letter (Exhibit A to the moving affidavit on this motion) is wholly fallacious and is contradicted by a casual reading of the May 5, 1975 letter which states in pertinent part:

> The attached listing is not necessarily exhaustive as I hope to investigate the facts of the case more fully in the near future, and also to study the indictment and the relevant statutes involved in conjunction with such factual investigation.
>
> In any event, I have prepared a preliminary schedule of items which I am enclosing with this letter. (Emphasis supplied)

My May 5th letter thus contained a confirmation of my broad request for all discovery materials to which Mayer was entitled, with a preliminary specification of only some of those materials. Any other reading of the letter, particularly the one now advanced in the prosecutor's

memorandum does a great injustice to the letter and the request; it also constitutes a woeful commentary on the trustworthiness of the United States Attorney's office in its dealings with me in this matter.

No fair or reasonable construction of the correspondence and dealings between Mr. MacDonald and I could possibly result in the reading urged in opposition to this motion.

There was no reason for me to limit Mayer's discovery to less than what he was entitled to, and, furthermore, there was no way in which I could specify all the documents as to which Mayer desired discovery, not knowing what they were.

It is thus clear on the facts that defendant Mayer, by motion, sought production of all documentation in the government's possession to which he was entitled under Rule 16(b) and that defendant Mayer's Rule 16 (b) motion was discontinued only upon representation by the prosecutor that such material was being provided voluntarily.

4. In view of the foregoing facts it is established on this record that the prosecutors have failed to carry out their obligation under Rule 5 of the Southern District Plan for Prompt Disposition of Criminal Cases, to make available within six months after indictment all of the requested discovery to which defendant is entitled. That failure is, in and of itself, of such tremendous scope here as to not only warrant but compel dismissal of the indictment as against defendant

Mayer if Rule 5 is not to be ignored and repudiated.

WHEREFORE, it is respectfully requested that the Court grant defendant Mayer's motion for dismissal of the indictment as to him, for failure of the prosecution to comply with Rule 5 of the Southern District Plan for Prompt Disposition of Criminal Cases.

Melvin D. Kraft

MELVIN D. KRAFT

Sworn to before me
this 10th day of November, 1976

Edgar A. Smith

EDGAR A. SMITH
Notary Public, State of New York
No. 31-4618016
Qualified in New York County
Commission Expires March 30, 1977

GRAND JURY

TESTIMONY OF LEON MAYER

Persons Referred To:	Transcript Pages Vol. I & II	Documentation* Made Available Since October 19, 1976
Lichtman, Joe	I;40,47-48,62,68,73,78 II; 7,8	Folder 24, GX-21,38,39,170, 177,194,198,200,203
Lichtman, Murray	I; 32,36-44,59; II; 8	Folder 25, GX -22,36,246
Adler, Mel	I; 37	Folder 1(i)
Berengarten, Robert	I; 46	Folder 15, GX-46
Caggiano, Joseph	I; 39	GX-28, 29
Ezrine, Ivan	I; 47	Folder 14, GX-1, 182
Geller, Murray	I; 69	
Glass, Leonard	I; 46,54,76-77	Folder 15
Goral, Lawrence	I; 71	Folder 16, GX-120,123,163
Greco, Anthony	I; 71	GX-114,116,117,118,119, 124,164,171,172

Heino, George	I; 62	
Hellerman, Michael	I; 78	Folder 20,GX-178,179,180, 197
Kluger, Alan	I; 36,48,49	Folder 1(e)
Lipton, David	I; 69, 70	Folder 26, GX-54, 103
Meyer, Ed	I; 37,74,76,II; 8	Folder 29
Podell, Jeff	I; 59,61	Folder 5, GX-73,79,230,291, 315
Rafalowicz, Leon	I; 39, II;4	Folder 39,GX-22,61,294,325
Rich, B.	I; 75	Folder 41
Rich, Mike	I; 47, 56	GX-158, 160,208-213,215-238
Simon, Larry	I; 70,71	
Stein, Sidney	I;34,35,56-58,63-66, 67-69, II; 4,5	GX-26, 28,29

*Designation of the documentation is made in the same terms used in the prosecutor's letters to the Court and all defense counsel of October 19, 1976 (Exhibit F to the moving affidavit herein).

EXHIBIT G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, -against- IVAN ALAN EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, LEON MAYER, EDWARD VASSALLO, LAWRENCE GORAL, AND ANTHONY L. GRECO, JR., Defendants.	75 Cr. 363 NOTICE OF MOTION (CHT)

PLEASE TAKE NOTICE that, upon the indictment and all prior proceedings had herein, defendant Leon Mayer will move this Court, at a future date time and place to be fixed by the Court, for an order pursuant to Rules 7(f), 12 and 16 of the Federal Rules of Criminal Procedure:

(1) directing the filing of a bill of particulars as set forth in the accompanying affidavit of Melvin D. Kraft; and

(2) directing the production of those documents described in the accompanying affidavit of Melvin D. Kraft, pursuant to Rule 16 of the Federal Rules of Criminal Procedure; and

(3) directing the United States to state whether it has any material which constitutes evidence or refers to or may lead to the discovery of evidence which tends or may tend to exculpate defendant Mayer of the charges set forth in the indictment herein; and if the United States has any such material, directing it to produce the same; and, if the

EXHIBIT H

United States has no such material, directing it to so state; and

(4) for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
June 27, 1975

MELVIN D. KRAFT, P.C.
Attorney for Defendant
Leon Mayer
36 West 44th Street
New York, New York 10036
(212) 575 - 7800

TO: W. CULLEN MacDONALD, ESQ.
Assistant United States Attorney
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

IVAN ALAN EZRINE, JOSEPH LICHTMAN, MURRAY LICHTMAN, LEON MAYER, EDWARD VASSALLO, LAWRENCE GORAL, and ANTHONY L. GRECO, JR.,

Defendants.

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75 Cr. 363

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MELVIN D. KRAFT, being duly sworn, deposes and says:

1. I am attorney of record for defendant Leon Mayer, and I make this affidavit in support of defendant Mayer's motion for an order pursuant to Rules 7(f), 12, and 16 of the Federal Rules of Criminal Procedure, and for exculpatory material and other relief.

2. The indictment herein, filed April 11, 1975 charges defendant Leon Mayer ("Mayer") and six co-defendants with eighteen counts of conspiracy, mail and wire fraud, securities fraud, sale of unregistered securities, and fraud in a matter within the jurisdiction of an agency of the United States. The "object" of the alleged conspiracy, as described in subdivision II of Count One of the indictment, was "to sell and distribute shares of [Minute Approved Credit Plan, Inc.] stock while fraudulently concealing and falsifying material information required to have been fairly

and fully disclosed." This [redacted] fraudulent scheme involving the offering of Minute Approved Credit Plan, Inc. ["MACP"] stock in 1972 is at the center of the allegations of Counts Two through Eighteen, charging various substantive offenses.

3. At the time of the acts alleged in the indictment, i.e., December 1971 - August, 1972, Mayer was a registered representative with A. C. Kluger & Co., a broker-dealer of securities and the underwriter for the 1972 offering of MACP stock which is at the heart of the indictment. His co-defendants include the two principals of the issuer, MACP, and four people unknown to Mayer.

4. Upon Mayer's arraignment, I was appointed to serve as his counsel under the Criminal Justice Act. Shortly thereafter, on May 5, 1975 I sent a letter to the Assistant United States Attorney requesting: a bill of particulars; all written or recorded statements made by Mayer to the Government; grand jury transcripts; certain documents referred to in the indictment; and exculpatory material under Brady v. Maryland. A copy of that letter is annexed hereto as Exhibit "A", and respectfully incorporated by reference herein.

5. Several weeks later, the prosecutor, herein Mr. MacDonald, sent me some of the above material, to wit, the transcript of Mayer's Grand Jury testimony on March 19, 1975 (the transcript of Mayer's March 21 testimony was received later) various Grand Jury exhibits, the transcript of Mayer's testimony before the Securities and Exchange Commission, and certain other documents. Mr. MacDonald also stated that other unspecified Rule 16(b) material was available for inspection at his office.

BEST COPY AVAILABLE

Due to scheduling problems on the part of both Mr. MacDonald and myself, such inspection was not arranged until yesterday. June 26, 1975. Although the inspection was begun, it was not completed.

6. Thus, while some discovery has been granted, certain of the discovery materials requested are yet to be supplied.

7. Moreover, I have not yet been served with a bill of particulars nor has the prosecutor supplied any exculpatory material under Brady v. Maryland, or indicated that it has no such material, if that is the case.

8. Only after the discovery materials and bill of particulars described above are received, studied and investigated further will I be in a position, as counsel for defendant Mayer, to determine what other pre-trial motions, including motions to dismiss the indictment or various counts thereof, to suppress evidence, or for a severance, should be made, and whether the facts support the making of such motions.

I do not wish to make such motions on make-weight grounds, nor do I wish to resolve doubts against the making of such motions.

9. Due to the vacation schedules of both Mr. MacDonald and myself, it will not be possible for me to deal with all of these matters until sometime during the month of August. (I will be away from my office during July.) Accordingly, it has been agreed between counsel that defendant Mayer's right to make any and all further motions is reserved until September 1, 1975; the understanding being that a bill of particulars will

be supplied and the discovery described above will be completed before that time.

WHEREFORE, it is respectfully requested that this Court grant defendant Leon Mayer an order pursuant to Rules 7(f), 12 and 16 of the Federal Rules of Criminal Procedure:

1. directing the filing of a bill of particulars as set forth in the accompanying affidavit of Melvin D. Kraft, pursuant to Rule 16 of the Federal Rules of Criminal Procedure; and

2. directing the production of those documents described in the accompanying affidavit of Melvin D. Kraft, pursuant to Rule 16 of the Federal Rules of Criminal Procedure; and

3. directing the United States to state whether it has any material which constitutes evidence or refers to or may lead to the discovery of evidence which tends or may tend to exculpate defendant Mayer of the charges set forth in the indictment herein; and, if the United States has any such material, directing it to produce the same; and, if the United States has no such material, directing it to so state; and

4. for such other and further relief as to the Court may seem just and proper.

Melvin D. Kraft

MELVIN D. KRAFT

Sworn to before me
this 27th day of
June, 1975.

U.S. DISTRICT COURT
FILED
NOV 12 1976
S.D. OF N.Y.

ENDORSEMENT

Defendant Mayer's motion to dismiss the indictment against him on the ground that the Government was not ready for trial at the time its notice of readiness was filed is denied. The contention that the Government failed to make certain discovery materials available on time is without merit. This Court has already held that it was the defendant's obligation to specifically request those documents he wished to discover. See Memorandum Opinion at 11 (August 5, 1976). Mayer's counsel specifically requested items which were then made available by the Government for discovery purposes. The Government was under no obligation to physically deliver to the defendants all the documents in its possession including, inter alia, public SEC files and records. The Government adequately complied with its requirements under Rule 16 of the Federal Rules of Criminal Procedure.

Accordingly, the motion herein is denied with prejudice.

So ordered.

Dated: New York, New York
November 11, 1976

Charles H. Tenney
U.S.D.J.

MICROFILM
NOV 12 1976

United States of America vs. Leon Mayor

United States District Court for Southern District of New York

0226

DEFENDANT

DOCKET NO. 75Cr.363(CHT)

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH Jan. DAY 17, YEAR 1977

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[x] WITH COUNSEL Melvin D. Kraft, Esq (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [x] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of { [ ] NOT GUILTY. Defendant is discharged
[X] GUILTY. unlawfully, wilfully & knowingly using th mails in a scheme & artifice to defraud.

Defendant has been convicted as charged of the offense(s) of (Title 18, U.S.Code,Sections 1341&1343 unlawfully wilfully & knowingly, in the offer & sale of securities, by means & instruments of transporation & communication in interstate commerce & by use of the mails, employ devices, schemes & artifices to defraud.(Title 15, U.S.Code, Section 77e & 77x.) in a matter within the SEC, unlawfully, wilfully & knowingly did make & cause to be made false ficititious & fraudulent Statements.(Title 18, U.S.Code,Section 1001.) unlawfully wilfully & knowingly conspiring so to do.(Title 18, U.S. Code Section 371.)

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) MONTHS, on count one(1) and TWO (2) YEARS, on each of counts 5,6,7,9,11 through 18 to run concurrently with each other. Execution of sentence on each of counts 5,6,7,9,11 through 18 is suspenddd. Defendant placed on probation for a period of TWO (2) YEARS, subject to the standing probation order of this Court, to commence upon expiration of confinement imposed on count one.

Defendant is continued on his present bail until Feb. 7,1977 at which time he is to surrender to the U.S. Marshal in room 506 to commence service of his sentence.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

JAN 19 1977

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

DISTRICT COURT
JAN 17 1977

SIGNED BY
[X] U.S. District Judge
[ ] U.S. Magistrate

Charles R. Comey

Date Jan 19,1977

58